CONSTITUTIONAL CONVENTION

OF THE

STATE OF MARYLAND

Chamber of the House of Delegates

State Capitol

Annapolis, Maryland

January 3, 1968 - 10:10 a.m.

HONORABLE H. VERNON ENEY,
President

Reported by:

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P R O C E E D I N G S

THE PRESIDENT: The Convention will please come to order.

The invocation this morning will be offered by the Reverend John N. Crock of the Christian Community Presbyterian Church at Bowie. Reverend Crock is Delegate Mentzer's pastor.

Reverend Crock.

REVEREND CROCK: Shall we pray:

Eternal Father, we know that Your presence encompasses the earth but we acknowledge you here in this place. We know that You are without form, but we see you best in the majesty of the world we know, and in the strength and compassion of our fellow men.

We know, too, that You need no praise, yet we would praise you now.

We rejoice, O Lord, in the capacities of mind and will which enable us to meet the challenges of life. Help us to realize our own potentials and to pave the way for all men to find fullness of life through our work today.

Amen.

THE PRESIDENT: Roll call.

MARYLAND. Constitutional Convention, 1967-1968. Proceedings. of the Constitutional Convention of the State. Jan 3, 1968.
MD-50m
Card 2 of 4

MARYLAND. Constitutional Convention, 1967-1968. Proceedings. of the Constitutional Convention of the State. Jan 3, 1968.
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MARYLAND. Constitutional Convention, 1967-1968. Proceedings. of the Constitutional Convention of the State. Jan 3, 1968.
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carrier -- a grey Thunderbird automobile is in the parking lot with lights on. If any of you recognize it, you had better take care of it.

THE PRESIDENT: Roll call.

MARYLAND. Constitutional Convention, 1967-1968. Proceedings. of the Constitutional Convention of the State. Jan 3, 1968. MD-50m Card 2 of 4

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-- a grey Thunderbird automobile is in the parking lot with lights on. If any of you recognize it, you had better take care of it.

THE PRESIDENT: Roll call.

Has every delegate answered the roll call?

The Clerk will record the roll call.

There being a quorum present, the Convention is in session.

The Chair recognizes Delegate Powers.

DELEGATE POWERS: Mr. President, I move that today's calendar and agenda be amended so that under Item 9, unfinished business, would be added the special orders that were not completed yesterday, namely, Committee report S&D-16, LB-1, and Committee report S&D 12, GP-6, and as amended, that the calendar and agenda be adopted.

THE PRESIDENT: Is there a second?

(The motion was duly seconded)

THE PRESIDENT: All in favor signify by saying Aye. Contrary, No. The Ayes have it. The calendar is amended as moved, and as amended is adopted.

There are several announcements. I made one earlier -- a grey Thunderbird automobile is in the parking lot with lights on. If any of you recognize it, you had better take care of it.

Are there any reports of other committees, Mr. Clerk?

MR. QUILLEN: No, sir.

THE PRESIDENT: No reports.

Are there any motions or resolutions?

MR. QUILLEN: No, sir.

THE PRESIDENT: The Chair hears none.

There are several announcements that I would like to make in ord er to remove any misunderstanding as a result of an announcement I made yesterday. This has to do with amendments on third reading, but I think I had better defer it until some of the absentees are here. I will interrupt the proceedings later on to make the announcement.

We will resume consideration of the special orders. We still have under consideration Section 3.23 of the Committee recommendation LB-1, LB-2 and LB-3.

I can't help saying that while any historian reading the newspaper stories concerning this Convention would conclude that the issues which had provoked the most debate and division were those having to do with single-member districts, and the collective bargaining provision,

I think he would be quite wrong, because I am completely convinced now that the one section that has provoked more stress, strain, consultation, discussion, revision, change, correction, third revision , fifth revision and endless revisions, is section 3.23. I was more than a little dismayed at midnight last night, after we had adjourned, to have several delegates come into my office and say that the one thing that was abundantly clear about the discussion that had occurred just before adjournment was that it was not clear, and that the meaning of the two amendments before the Convention were not thoroughly understood by the delegates.

This poses a real problem, because this is a vital issue. It is one that is highly technical. It is one that is very difficult to explain to a layman and, unfortunately, it is one that the lawyers seem to love to debate endlessly.

In an effort to make a little progress, I have had some additional meetings this morning which, up to the moment, have produced no progress. For this reason, I am going to suggest to the Convention that they stop talking

for the moment about the problem presented by amendment 16-B and, if anyone has the notion of doing so, that he refrain from moving a reconsideration. Within the next hour I hope that by private discussion among two or three of the delegates who have worked so much on this, we can at least come up with a statement that will be more understandable to the remaining delegates.

I think also that the problem with respect to section 16-B may be somewhat clarified, or at least sharpened, if we proceed to the consideration of the other amendments in connection with section 3.23. This may seem a backward way to do it, but all of us who have participated in the discussions this morning are agreed that we will make more time, more progress, if we will consider the other two or three amendments to this section, and then come back to the question presented by amendment 16-B.

Delegate Grant, you have an amendment which is largely a matter of style. Amendment Z. Do you desire to offer it?

DELEGATE GRANT: Yes, I would.

THE PRESIDENT: Pages will please distribute amendment Z, Z for zebra.

Delegate Freedlander.

DELEGATE FREEDLANDER: I believe you meant 16-A, did you not, rather than 16-B?

THE PRESIDENT: You are quite correct. 16-A was the amendment which was substituted for 16. Thank you. I thought I understood it; now I see that I am confused also.

While the pages are distributing this amendment I would like to indicate that I would propose to recognize you, Delegate Fox, after this to move your amendment Y, that I und erstand you are going to move, if Delegate Boyles is not here, and that after that Delegate Moser, I would propose to recognize you to move your amendment GG, if you decide to offer it.

Delegate Moser.

DELEGATE MOSER: I'm sorry, Mr. President, I was talking. I did not hear you.

THE PRESIDENT: I am indicating after consideration of the present amendment I would propose to recognize

Delegate Fox to make an amendment,and following that would propose to recognize you to offer your amendment GG, if you still intend to offer it, and following that would propose to recognize Delegate Carson for his amendment pertaining to natural resourdes, and then to recognize Delegate Wagandt for the amendment pertaining to education.

Delegate Moser.

DELEGATE MOSER: Mr. President, I would not offer GG except in connection with a reconsideration of 16-A.

THE PRESIDENT: Very well, then we will hold GG in the end.

Delegate Wagandt.

DELEGATE WAGANDT: Mr. President, Delegate Freedlander is going to offer the amendment pertaining to striking "education" and I believe that there is an amendment with my name on it to strike natural resources from the list of exceptions under the general application of laws.

THE PRESIDENT: Yes, I will recognize Delegate Freedlander then on the amendment F,the amendment with

respect to natural resourdes, I referred to incorrectly as the Carson amendment. That is the one to which you refer?

DELEGATE WAGANDT: Yes.

THE PRESIDENT: Amendment Z will be No. 17.

The Clerk will read the amendment:

MR. QUILLEN: Amendment No. 17 to Committee recommendations No. LB-1, LB-2, LB-3, as amended by Report No. S&E-16, by Delegates Grant and Byrnes:

On pages 8 and 9, section 3.23, General Application of Laws, onpage 8 in line 48 after the word "laws, in line 49 immediately preceding the word "providing", on page 9 in line 2 immediately preceding the first word "pertaining", in the same line immediately preceding the second word "pertaining", in line 3 immediately preceding the word "pertaining", in line 4 immediately preceding the word "providing", in line 6 immediately preceding the word "granting", and in line 8 after the first word "or" in each instance, respectively, insert the following:

"(1)", "(2)", "(3)", "(4)", "(5)", "(6)", "(7)", and "(8)".

THE PRESIDENT: The amendment is submitted by

Delegate Grant, and seconded by Delegate Byrnes.

The Chair recognizes Delegate Grant.

DELEGATE GRANT: This amendment probably deals with the longest section of the Constitution which starts on line 45 on page 8, and runs to line 12 on page 9. It deals with some eight different subjects. The effect of the amendment is to simply do what was done in one of the earlier drafts of this, and that is to put in the numbers 1 to 8 before the eight different subjects.

This section as indicated by the amount of debate, and also by the remarks of the President, is probably going to become one of the most referred to sections in the Constitution since it contains the authority for the legislature to act by other than general public laws in certain specified areas.

As such, you will have to refer to certain exceptions. Rather than having to spell the sectionout in detail, they can simply refer to exception 1, exception 3, exception 5, and so forth. It will make the section much easier to understand in the future.

I think it would even make it easier to

understand the debate at this time. I hope that the Convention will go along and adopt this amendment.

THE PRESIDENT: Delegate Penniman.

DELEGATE PENNIMAN: I don't have any strong feelings on this matter. I do point out that in Article I, section 8 of the United States Constitution, there is a listing of 18 grants of power to the Congress of the United States, and we have managed to get by with that even without a number.

However, I do not personally strongly object to the numbering, if it would simplify it for my friends among the lawyers.

After last night's discussion anything that will simplify the matter for them seems to me would be well worth doing.

THE PRESIDENT: Any other discussion?

Delegate Gallagher, do you have any comment?

Are you ready for the question? The Clerk will ring the quorum bell.

The question arises on the adoption of

amendment 17. A vote Aye is a vote in favor of the amendment, a vote No is a vote against.

Cast your vote.

Has every delegate voted? Does any delegate desire to change his vote?

The Clerk will record the vote.

There being 82 votes in the affirmative, and 8 in the negative, the motion is carried, and the amendment is adopted.

The next amendment is amendment ¢. Will the pages please distribute amendment Y. Y for Yoke.

Delegates Clagett and Case and Moser, will you join me in the office for just a few moments, please?

(Whereupon, Delegate James assumed the Chair)

THE PRESIDENT: Amendment No. 18, designated as "Y"; does everyone have a copy of the amendment designated as "Y"? Will the pages please distribute the amendment.

The Clerk will read amendment 18.

MR. QUILLEN: Amendment No. 18 to committee recommendation GP-1, LB-2, LB-3 as amended by Report No. S&E-16, by Delegate Boyles:

On page 9 Section 3.23 General Application of Laws in line 19 after the word "is" add the words: "or can be made".

THE PRESIDENT: The Chair hasn't had a chance to look at these in advance.

Delegate Fox.

DELEGATE FOX: This is Delegate Boyles' amendment but he asked me in his absence this morning to introduce it for him, and to say a word of explanation in regard to it.

This section that we are dealing with now, I see no reason why it should be confusing,because I am afraid some people would rather be confused than not. It is merely designed to prevent the General Assembly from indulging in thepractice of enacting laws for each county on the county by county basis.

The idea behind this is that the General Assembly shall be restricted to enacting general laws which are uniform throughout the state, and allow the counties under the home rule given to them to run their own show, and enact their local laws.

The section is a fusion of the section that was passed in the legislative branch, and a section that was passed in the Local Government branch. The very last few lines of thesection, if you would turn over to them on page 9, the very last lines of the section was the language that was put in by the Committee on the Legislative Branch, and their recommendation was that the General Assembly shall pass no special law when a general law is applicable.

Style, Drafting and Arrangement changed that to read in the way that it does on page 9, beginning there at line 9: "The General Assembly --" excuse me, not 13. line 18 is what I want. I guess I had better read the whole section, starting on line 13:

"This section shall not be construed to limit any power of the General Assembly otherwise existing under this Constitution to enact special laws except that a special law shall not be enacted for any situation for which a general law is applicable."

Now, this amendment is addressed to the words "is applicable." The thought that Delegate Boyles has is that a special law could not be enacted if there was a

general law in existence that was inapplicable.

He felt that was too narrow, and that he wanted the language broadened to mean that a special law could not be enacted where any general law was applicable, or could be made applicable, the idea being to further make sure that the General Assembly did not enact special legislation if it were possible to achieve the same thing by a general law.

THE PRESIDENT: Delegate Gallagher.

DELEGATE GALLAGHER: Mr. President, and ladies and gentlemen: I would be required to oppose this change, because this is not the language of the committee, but I don't want to say that the amendment is not withoutmerit, because it is.

The present Constitution ---

THE PRESIDENT: You mean it is not without merit?

DELEGATE GALLAGHER: That is correct.

The present Constitution does provide in Article III, section 33, with respect to thiis subject matter, that the General Assembly at its first session after the

adoption of this Constitution shall pass general laws providing in the cases enumerated in this section which are not already adequately provided for, and for all other cases where a generallaw can be made applicable, so it was the intention of the framers of the 1867 Constitution to get as much general law on the books as possible, and to fairly to limit the ability of the General Assembly to pass special laws.

The model Constitution, if my memory serves me correctly, also uses the "can be made applicable, rather than the "is applicable" test for general law. I don't think the adoption of this amendment would do violence to the committee report.

THE PRESIDENT: A point of inquiry: Under the present law certain types of corporations can be created by the General Assembly by special law, that is, provided that the general laws do not accommodate the particular type of corporation that you are correcting by special law.

Now, if this were adopted wouldn't it really completely eliminate the ability of the General Assembly to create a special type of corporation for any purpose?

DELEGATE GALLAGHER: I would think that if a generallaw could be passed to take care of the kind of situation which the act of the legislature seeking to create a new corporation would accomplish, then the legislature would be prohibited from passing such an act under the proposed amendment.

THE PRESIDENT: Isn't it possible to state that there is no situation that can't be taken care of by general law?

DELEGATE GALLAGHER: That is where we used the word "if the general law is applicable". If it is a situation which required general law it would be easier to pass a general law rather than to ask yourself each time is this particularly proposed special law possible to put under the canopy of some generallaw which doesn't exist, but which the legislature could pass?

I was happier with the language that came out of the committee. I am just pointing out that the proposal is not one which is unknown to state Constitutions, and it has been used elsewhere.

I am going to vote against it, but I want to

say that it has some obvious merits.

THE PRESIDENT: Any further discussion?

Delegate Adkins.

DELEGATE ADKINS: Mr. President, I wonder if the chairman of the committee would yield to a further question along the lines of inquiry that the Chair was putting?

Would this not in effect nullify the right of the General Assembly to pass special laws, since I think in the colloquy between you and the President it has been indicated at least that practically any special law could in its terms be made a general law, that being the case, would this not effectively constitutionally affect the legislature from ever passing a special law?

THE PRESIDENT: Delegate Gallagher.

DELEGATE GALLAGHER: I would not go so far as to make that universal declaration, but I would certainly admit that it would severely limit the ability of the General Assembly to pass special laws in the future.

DELEGATE ADKINS: Is that the intent of the amendment, to limit it to the fullest extent of the actual

meaning of the language?

DELEGATE GALLAGHER: I am not acquainted with the motive of the sponsor. I do know why the committee used is rather than can be made applicable, and I think you can at least say that the word suggested by the amendment would severely cut down on the ability of the General Assembly to pass special laws so this really is a question of philosophy, it seems to me, and we felt in the Committee on the Legislative Branch that we did not want to impose so severe a limitation, and that is why we used the word "applicable".

THE PRESIDENT: Delegate Beatrice Miller.

DELEGATE B. MILLER: Mr. President, could you give us an example of what is a special law?

THE PRESIDENT: Are you speaking to Delegate Gallagher, or to me? I can do it very easily.

A bill passed to award damages to someone who may have been imprisoned improperly. That would be a special law.

Delegate Miller.

DELEGATE MILLER: Is there a way that such a

law could be general?

THE PRESIDENT: You could pass a Maryland tort claim which would make it applicable for a person to get damages ---

DELEGATE MILLER: May I ask a question?

Do you think if it is possible if the General Assembly wanted to pass a law to compensate for such damages that the court might hold it would be necessary to pass a general claims law rather than awarding damages in the specific case, because of the language of the amendment?

THE PRESIDENT: Delegate Gallagher.

DELEGATE GALLAGHER: If the amendment were adopted, I think you could make a strong argument if there was any way that the General Assembly could set up a commission or an approach to the problem of redressing those who had been unduly aggrieved by the state. In all probability it would be next to impossible to pass a law for the relief of John Smith, because he had been unjustly imprisoned, or there is some factual situation where he has been done an injury by the State, well, perhaps someone aiding a policeman, let us say, was crippled for

life, and the state wanted to pass a law to grant him some relief for that, it may be that the Court of Appeals would say "Well, now, you can set up a Court of Claims or a Court of Equitable Distribution of State Funds under appropriate circumstances". You are quite right.

As I said to Delegate Adkins, this would severely limit the power of the General Assembly to pass general laws.

THE PRESIDENT: Any further discussion?

Delegate Macdonald.

DELEGATE MACDONALD: Mr. President and fellow delegates, I would like to rise to support this amendment. I think it has merit. I think the matter of special laws, and they are more or less -- It would be better to describe them as private laws that would take care of special situations usually dealing with one individual or one entity, and I think we should limit this matter of special laws, because if we do not limit it then it could be made a subject for favoritism -- and in addition we should keep in mind that there is a rule that all laws are presumed to be constitutional, and there is a

strong presumption in favor of constitutionality, so that even though it is limited the courts will go to great length to sustain the validity of the law, and I think it is a good amendment.

THE PRESIDENT: Delegate Gallagher.

DELEGATE GALLAGHER: Mr. President, I didn't read the entire article, section 3 -- Article 3, section 33, as it exists in the present Constitution: "The General Assembly shall not pass special or local laws in the following cases: --", and then it lists them.

Then: "--and the General Assembly shall not pass any special law where a provision has been made by an existing general law", and then this mandate: "The General Assembly shall in its first session after the adoption of this Constitution shall pass general laws providing for cases enumerated in this section which are not already adequately provided for, and for all other cases where a general law can be made applicable."

It seemed to me what they tried to do in the 1867 Constitution was to preserve the flexibility of existing laws, and at the same time to exhort the General

Assembly to pass general laws in as many areas that they could think of so there wouldn't be a variety of special or private bills, as Delegate Macdonald rightly said.

The proposed amendment is a more stringent application than the 1867 language.

THE PRESIDENT: Delegate Gilchrist.

DELEGATE GILCHRIST: To point out the ridiculous lengths to which this kind of language might result, I would like the Convention to know of the situation which Delegate Grant discussed with me on our way home one weekend, a couple of months ago, when Delegate Grant pointed out to me that a client of his had taken 27 young bulls to a stockyard in Garrett County.

THE PRESIDENT: How many bulls?

DELEGATE GILCHRIST: 27.

In a case of mistaken identity, an employee of the State Department of Agriculture had castrated the 27 young bulls, changing their value from bulls to hamburger meat.

There is in the present Maryland law no way in which that man can be compensated, except by the

passage of a special act, and I respectfully suggest to the Convention that I can see no reason or no necessity for the General Assembly to consider whether or not it should pass a general act permitting compensation for all bulls which have accidently been castrated by the Department of Agriculture. It serves an admirable purpose, but I see no general purpose served.

THE PRESIDENT: Delegate Burdette.

DELEGATE BURDETTE: I should just like to insert a little legislative history when we have a moment of suspense, if I may take the time.

I remember when this matter was brought up in the Committee on the Legislative Branch, that I read the language reading as a layman, "is applicable" in its generic sense, that is, if it could be applicable.

But I want to be fair by saying since I also serve on the Committee on Style, I can't be sure I was present at all the discussions of the Committee on Legislative Branch on this point.

When this matter got to the Committee on Style, the question turned up doesn't "is applicable" mean

"could be applicable"? I commented that I should so read it as a layman, but I discovered that not only was the committee divided, but the lawyers were divided.

I subsequently said to the Committee on the Legislative Branch if you want it to be clear to the layman, one would put in "an existing law." As a political scientist, if I were advising the Court of Appeals I would read the language as generic, and would read this language as an attempt by the General Assembly to pass general laws if it would be policy.

I would advocate this as a matter of policy. I would say to my friend, Delegate Gilchrist, these special laws are not what we want in this state. We have dropped out protective proscriptions from some of the present Constitution. I hope we will not have divorce acts passed by the General Assembly, and I hope the lawyers would find some other clause which would protect, but it seems to me that we may have a larger area of special law which I assume the lawyers begin to interpret as private law.

I have no strong feelings, but I wanted to

make these additional comments.

THE PRESIDENT: Delegate Gallagher.

DELEGATE GALLAGHER: I wantto say a few words to our descendants, as seems to be the custom this morning:

In order to make it perfectly clear if Mr. Boyles' amendment fails to insert the word "existing" before "law" on line 19, so it would read "for which an existing general law is applicable," thereby using almost precisely the same terminology of the 1867 Constitution.

The colloquy which Delegate Burdette spoke about did take place, as he stated, and I interpret the present language to talk about existing general laws. I think the committee did as well, and in order to make that perfectly clear for those who labor over these debates in the future, I would be happy to sponsor the addition of the word "existing" at this point.

THE PRESIDENT: A point of inquiry:

Did your committee make any study of the volume of special legislation? My offhand impression is that there is very little.

DELEGATE GALLAGHER: It was our experience there had been virtually no special legislation during the period of time we were in the General Assembly.

THE PRESIDENT: Delegate Scanlan.

DELEGATE SCANLAN: I would like to move the previous question.

(The motion was duly seconded)

THE PRESIDENT: The question arises upon the adoption of Amendment No. 18. The Clerk will ring the quorum bell.

Delegate Borom.

DELEGATE BOROM: Can we take at least a voice vote on the moving the previous question?

THE PRESIDENT: Yes.

The question arises on moving the previous question. All those in favor say Aye. Those opposed, say No. The Ayes have it, and it is so ordered.

We will record the vote. Has everyone recorded his vote? The Clerk will record the vote. There being

votes in the affirmative, and in the negative, the amendment is

Delegate Gallagher.

DELEGATE GALLAGHER: With no objection, on line 19 of page 19, before the word "general" we put "an existing", to make this perfectly clear, an insert from the floor, so to speak.

THE PRESIDENT: Any objection to the verbal amendment?

DELEGATE GALLAGHER: On line 19, the word "a" be stricken, and the words "an existing" be substituted.

THE PRESIDENT: This would be amendment 19. See that an amendment is prepared.

All in favor of the amendment say Aye. Opposed No.

The Clerk will ring the quorum bell, and we will take a vote.

Before making the change, is there any discussion.

Dr. Pullen? Discussion?

The members will record their vote on amendment No. 19. Has everyone recorded his vote? The

Clerk will record the vote.

There being 79 votes in the affirmative, and 10 in the negative, amendment No. 19 is adopted.

(Whereupon, Mr. Eney resumed the Chair)

THE PRESIDENT: This will be No. 20. The Clerk will read the amendment.

MR. QUILLEN: Amendment No. 20 to Committee recommendation No. LB-1, LB-2, LB-3, as amended by Report No. S&E-16 by Delegates Macdonald and others:

On page 9, section 3.23. General Application of Laws, in lines 2 and 3 strike out the words "pertaining to natural environment and resources;".

THE PRESIDENT: Delegate Wagandt, do you desire to submit this amendment?

DELEGATE WAGANDT: Yes, I do.

THE PRESIDENT: The Chair recognizes Delegate Wagandt.

DELEGATE WAGANDT: The purpose of this amendment is to prevent the General Assembly from passing laws with respect to general resources. This was our intent when it came before the Committee of the Whole. Apparently there

were members of the General Provisions Committee who interpreted otherwise, and so informed Style and Drafting.

Let us take a closer look at what happens if the General Assembly is allowed to enact a local law in this area of natural resources.

By so doing you will allow the legislature to set, if it so desires, a different oyster season for each Bay county or, to take another example, we could have one law for the minimum size of clams taken on the Queen Anne County side of the Chester side of the river, and another law prescribing a different minimum size for clams taken on the Kent County side of the Chester River.

This, incidentally, is not a hypothetical case. This is the actual situation as it exists today. We believe that the General Assembly can adequately provide for the conservation and improvement of natural resources through public general law, and through regulatory agencies.

The General Assembly, we believe, should deal with natural resources subject by subject, rather than county by county.

This certainly is the logical way to handle the problem, for natural resources do not recognize artificial county boundaries drawn by the hand of man, and I think it should be quite apparent that variations between counties could actually be harmful to the conservation of natural resources.

I would also point out to you that the public general law concept for natural resources is in keeping with the local government article, whose commentary on page 26 states that public general law - and here I quote - "might, in fact, deal with strip mining which at this time might exist in only one county. It could relate to conservation of the resources of the Chesapeake Bay or with the development of a river valley, even though all of the counties of Maryland could not border on the Bay or river valley."

Now, that is from the local government commentary. Now, as indicated in these sentences, regulatory legislation pertaining to strip mining could really be passed by public general law even though strip mining might exist in only one county but, of course,

if and when strip mining does appear in another county, then this same law would apply.

Now, I would also call your attention to the fact that we have many regulatory agencies in the area of natural resources, such as the Department of Chesapeake Bay Affairs, the Department of Water Resources, and the Department of Game and Inland Fisheries.

Furthermore, under the proposed Constitution, the General Assembly may empower some counties to enact their own laws on a specific subject, perhaps within certain guidelines constituted by the General Assembly.

Just to give you an example, the General Assembly could pass a law outlawing billboards along all county and state highways if it so desired, and it could then pass a law saying that Garrett County and Wicomico County could pass their own laws despite this general law in the area of billboards, so this gives you an idea of the amount of leeway and flexibility that we already have without getting into the realm of local law.

Furthermore, if a natural resource matter is strictly of local significance, then I say that the local

county council or county commissioners should control.

At the present time Article 25(a), 65(m) of the annotated code of Maryland, recognizes this by empowering charter counties to pass local fish and game laws.

We already have this now for chartered counties. I repeat, so such laws, by having this exception, such local laws now could be shifted to the General Assembly.

Certainly this is a retrogressive step, and it would allow one Senator and in some cases one Delegate to be the determining factor in a local law. We believe that the county legislative body should handle such local laws.

Now, in closing, I would propose one more thought to you, and this is that I would ask you to ponder well how broadly the term natural resources could be interpreted. Could it not be the opening of a wide door to a wide range of local law? After all, subdivisions in each county need water and sewers, and aren't water lines coming under, or couldn't they come under the head of natural resources, so think about this well. There are a variety

of ways, as I have stated, that natural resources can be handled without letting the General Assembly lapse back into the local law pattern; therefore I urge you on behalf of the lower, viable governmental units, that we are seeking and the more viable General Assembly that we are also seeking, that you give this amendment your overwhelming support.

Thank you very much.

THE PRESIDENT: Delegate Moser.

DELEGATE MOSER: Mr. President and ladies and gentlemen: What I have to say about this will apply also to the subsequent amendment that is going to come in to remove the exception pertaining to public education from this provision. I want to make several things c lear: No. 1, the Local Government Committee has no position on either of these matters as such. In point of fact, these were added because this was theinterpretation of the Style Committee when the Committee of the Whole adopted two provisions, public education and natural resources provision. Let us see exactly what we have now and what we are talking about.

I favor leaving these two items in section 3.23

as they are. I want to state that and make my position clear, but I don't think that it is a particularly urgent matter one way or the other.

At the present time, the General Assembly, as you know, can vary laws pertaining to resources, but what have they done? If you look at Article 66(c) where these appear, relating to water fowl or different methods of hunting about the State, some places you can hunt deer with bow and arrows, and some places with rifles. Fishing, the types of nets, the variations from river to river and county to county.

Oysters, of course, method of licensing, method of taking, and that type of thing. If you recognize that these are areas where the State should have complete control, then I submit that they should have the right, the legislature should have the right to vary the application of the law in any manner that they want to vary the application of the law.

It is de minimus, because in 1967 there were ten laws relating to local resources passed. This shows on page 41 in the table which is with the local government

recommendation, or the committee memorandum. In 1966 out of 756 laws there were 11 local laws in the field of natural resources, and I suggest that this is not something that one should get exercised about.

It is a particularly de minimus situation when one considers that we have effectively eliminated the true and evil public local legislation relating to local departments and things like that.

This is not that type of matter. It is a matter of state-wide significance, and I submit that the legislature, which we are trying to strengthen, should have full power over this type of thing.

We are going to have mandatory home rule. We have adopted home powers. We are going to have a unified judiciary -- all of this will serve to reduce the work product of the General Assembly, which is local legislation from 52 percent which it was in 1967, to considerably less than 15 percent, and I suggest that these provisions, both of them, the exception for natural resources, and the exception for the school system, that both of these should stay in this provision.

THE PRESIDENT: Delegate Raley.

DELEGATE RALEY: Mr. President and delegates of this Convention: I disagree very, very strongly with the Chairman of the Local Government Committee. I think that there is nothing more important than the passage of this amendment. It is one of the most important things we can do.

I call to your attention that the preservation of natural resources is one of the most pressing problems facing us, the problem involves even the fact of whether we are going to have water to drink, whether we are going to have land area to live in, whether we are going to have food to eat. These things are very pressing problems, and they are the kind of things that have to be handled on a state-wide comprehensive basis.

Now, what happens, what in reality happens is that when you allow these exceptions for local laws, you allow in a subtle way vested interest to put the pressure on those particular delegates or Senators to make exceptions in order to protect those interests.

I think this has been a deplorable situation

in the past, and if we are going to do anything about it we had better take this provision out.

I would like to tell you when Chairman Moser was talking about that, there were only so few local laws passed in regard to natural resources, I would like to read to you a provision in the report by the Wye Institute in regard to oysters in which they say: "Depletion and subsidy in the oyster fishery have developed despite biological and marketing advantages possessed by Maryland. The basic cause of these difficulties is Maryland's long-term policy of treating oyster grounds as a shared common resource. The difficulties inherent in this policy have been compounded by the influence of the counties exercised through state laws that are really county laws."

THE PRESIDENT: Delegate Raley, will you try another microphone? I am not sure whether the trouble is there or in the amplifier.

DELEGATE RALEY: This is the Wye Institute's report which was a study of the oyster fishery program. It says: "Depletion and subsidy in the oyster fishery have developed despite biological and marketing advantages

possessed by Maryland. The basic cause of these difficulties is Maryland's long-term policy of treating oyster grounds as a shared common resource. The difficulties inherent in this policy have been compounded by the influence of the counties exercised through state laws that are really county laws."

And then they give the following alternatives to status quo: "(1) repeal or modificationof the county laws; (2) State control of seed-production; (3) easing of gear restriction." I won't go on.

The point they make is because of this practice that we have had of these exceptions to state-wide laws, because of the fact that we can't have overall, administrative orderly procedure in that resource, it has cost the economy many thousands of dollars.

But more important than that to you people who live in the city, how in the name of Heaven can we manage any resources when people can come along and subtly erode away the procedures that are needed to protect these resources?

THE PRESIDENT: Delegate Raley, your three

minutes has expired.

DELEGATE RALEY: I wanted to make one more statement:

I know that there is a need for variances in these natural resource laws. In this section where it says, in section 3.23 it makes it possible to have that variance by providing for or regulating the powers of departments, agencies and instrumentalities of the state government.

If the department makes a decision, local legislation can be passed that will take away that power, so that gives a valve outlet. If we take out this section on natural resources we could still have the power to make the changes and differences and variances in the county and the General Assembly would still have the power to check the agencies that made those changes.

THE PRESIDENT: Anyone like to speak in opposition?

Delegate Macdonald.

DELEGATE MACDONALD: I would like to ask Delegate Moser a question.

THE PRESIDENT: Does any delegate desire to speak in opposition?

Delegate Weidemeyer.

DELEGATE WEIDEMEYER: Mr. President, I oppose this amendment. The way the committee had it was proper and correct. We have got to realize that deer is just as dear to the legislature and it is just as dear to the hunter in Garrett County, or the hunter in Worcester County, but there are differences in climate. For instance, snow could fall earlier, and weather could be colder in one area of the state, so that we dohave to have a difference just in deer hunting.

For example, ~~on our~~ Bay area, there are certain areas of the Bay where the scientists determine that fish spawn, and so that at certain seasons of the year it may be perfectly all right to get certain species of fish in one county where they are not spawning, and where in another county, probably the headwaters of the Bay, there should be a difference.

So while I think this amendment tries to uphold a theory, in practice it is impractical,

andshould be defeated.

THE PRESIDENT: Any other delegate who wishes to speak in favor of the amendment?

Delegate Boyce.

DELEGATE BOYCE: I move the previous question.

THE PRESIDENT: Is there a second?

(The motion was duly seconded)

THE PRESIDENT: For what purpose does Delegate Malkus rise?

DELEGATE MALKUS: This is a serious problem.

THE PRESIDENT: Delegate Malkus, will you take your microphone, please? I am going to ask Mr. Boyce to withdraw his motion.

Is your microphone switch on?

DELEGATE MALKUS: Mr. President, before making this request, I would like to say that I have been in accord with most of the motions to move the previous question, but in each and every one of those cases the subject matter was thoroughly discussed. That is not the case before us now. There are several of us who would like to speak on the matter. It is very important to the area

that we represent, and I would respectfully ask Mr. Boyce if he will withdraw his motion.

THE PRESIDENT: Delegate Boyce.

DELEGATE BOYCE: I would be delighted to oblige Senator Malkus, although I will say if it gets too long I will be on my feet again to close the colloquy, because we have discussed it several times.

THE PRESIDENT: The motion is withdrawn.

Delegate Winslow, do you desire to speak in favor?

DELEGATE WINSLOW: Yes.

Mr. President and Members of the Convention: The amount of space covered by this term : "natural environment and natural resources" concerns me a very great deal. I don't understand what the definition of natural resources is as lawyers might understand it, but it seems to me in this one term we have covered a multitude of items, and conceivably a multitude of sins, for natural resources will include all matters, including wat er, soil, [illegible] game, timber, natural gas, fish, parks, open spaces.

Under the provision that we have in this

language the legislature could legislate for rabbits in Harford County, for foxes in Baltimore County, for coal in Allegany County, for fresh water in Allegany County, and the greatest resource we have in the State, I suspect, happens to be people. Does this intend to allow the General Assembly to pass local legislation concerned with people?

Mention almost anything that you can imagine concerned with the life of the people of this State, and it will come one way or another under natural environment or natural resources.

I think this language is very dangerous language to encourage the General Assembly to deal in local legislation is very dangerous language, and I hope that the Convention will turn it down.

Incidentally, may I point out that despite the fact that as Chairman Moser said, and he was correct, that the Local Government Committee did not act upon this particular point, may I point out that on the list of sponsors to this amendment there are eight members of that committee, and the present speaker not on the list of sponsors, makes No. 9.

THE PRESIDENT: Delegate Boyer.

DELEGATE BOYER: Thank you.

Mr. President, and ladies and gentlemen of the Convention: It seems perfectly obvious to me that my brother, the first speaker, evidently knows very little if anything about the growing season or any other element about oysters or clams.

The General Provisions Committee considered this whole spectrum of public general and public local laws in this area,and it is was our considered position that when it comes to natural resources, because of such a wide variety throughout the state, I believe one delegate referred to it as America in miniature, where in some sections of the state we may have an overabundance of a particular commodity, and in other sections there may be a scarcity.

We would want to protect the scarcity,but not at the expense of overharvesting the over ... abundant area.

The growing season of the oyster from Kent County to Somerset County, it may vary as much as three or four months. This deserves special and particular

attention on a local basis.

He referred to the size of the clams in the Chester River. He probably is unaware of the fact that Wickes Beach is a major oyster producing area, it is illegal for anybody to harvest oysters -- that is, the spat -- that is the seed bed -- for Queen Anne's County oysters. This requires special, particular attention and could not possibly be handled on a public general law.

I know nothing at all about strip mining, but I can visualize where there may be some wide variances of opinion from Garrett County to Allegany County. I don't see how a public general law could possibly handle those particular, individual problems.

We have on the shore many, many loblolly pines. There is an abundance of them. They may be scarce in Garrett County. Perhaps Garrett County may want to protect them. We don't. There may be the curtailment the other way. It seems to me that there are many speakers on this trying to get a public general law, but most of them seem to come from the more citified areas, and I would respectfully suggest that this Convention reject this

amendment because of the individual characteristics of thenatural resource problem in the State of Maryland.

I urge you to reject this very important amendment to the problem of natural resources, and support the General Provisions Committee.

THE PRESIDENT: Does any other delegate desire to speak in favor.

Delegate Fox.

DELEGATE FOX: Mr. President, I rise as a delegate from an uncitified area to support this amendment and to say that unless you do support this amendment and the other amendments that have been put in here to water down the concept that we have against the practice that has gone on for so many years of having the General Assembly pass local laws that this concept is going to amount to nothing in this Convention.

Everybody says that this is a great idea to restrict the General Assembly so they enact only general laws and let the counties run their own show but then they say it is not a good idea when it comes to my bailiwick of natural resources or it is not a very good idea when it comes to my bailiwick of general education.

None of these exemptions are necessary. They are all put in to water down what is a good concept.

Under general law administrative agencies can pass what laws are necessary to take care of oysters in Kent County and oysters in Somerset County. It can be done under statewide law. It doesn't take much ingenuity on the part of a legislator to say that this particular bill

relates to natural resources and environment and education and therefore can be a local law.

Delegate Wiedemeyer touched on it nicely when he asked if a county's dispensary system was a part of its natural resources and environment. It is just a matter of trying to chip away at this concept until it means nothing, and I urge you to support this amendment and give meaning to this reform that the Local Government Committee has been trying to write in this Constitution.

THE PRESIDENT: Delegate Malkus, do you desire to speak in opposition?

DELEGATE MALKUS: Mr. President and members of the Convention, I would like to say -- and I think my record will bear it out -- I have always advocated wherever possible the uniformity of laws throughout the State of Maryland. But I would like to say that in the field of natural resources there are areas where you cannot have general law. Before I get into that, I would make response to the gentleman from St. Mary's County who quotes the Wye Institute report, but what the gentleman did not say is that the oyster industry in Maryland is on the upgrade to such an

extent now, Mr. President, that they have to restrict the number of catching days because they cannot find sufficient help to shuck the oysters. That is a milestone in Maryland and the credit belongs to Governor Tawes for having given the State a fine program.

You can have all the laws you want, but it is the administration of the laws that count.

Now, Delegate Fox talks about administrative agencies. He is absolutely right. I would like to say, too, sir, that we did this in the field of hunting deer. I was in favor of that, and I think it has worked out very well, but there are some areas, Mr. President, that we do not want to give complete say to in an administrative agency such as the Department of Tidewater Affairs.

I want to tell you a little story. Some 15 years ago the catching of the Ipswich clam or the Mannos[illegible] or the soft shell crab in Maryland was unknown. Something happened in New England and it was found that we had a market for these clams and they started catching these clams.

THE PRESIDENT: Delegate Malkus has one-half minute of three minutes left.

DELEGATE MALKUS: Mr. President, the catching of clams is a very detrimental thing. It affects the oyster industry. It affects the crabbing industry. It affects the fishing industry and it affects -- and you city people, I want you to hear this -- it greatly affects the valuation of river front property. The reason for that is this. They take them by mechanical and hydraulic dredges, and they make an awful lot of noise at 4 o'clock in the morning, so you start taking these clams and my phone starts jumping off the hook by the people who live around the Choptank River asking me to do something to stop the noise.

We have to allow the taking of these clams in certain areas. We have to find out which area they can be taken from so that they do not hurt the fish, do not hurt the crabs, do not affect the ducking and do not affect the home-owner.

It can only be done by area. It cannot be done by general law.

Now, in conclusion -- you have been kind -- if we turn this over like,Mr. Fox would say, to the administrative agency, the Department of Chesapeake Bay Affairs, what

is their concern? Their concern is to show the catching of an awful lot of clams. They do not care about the home-owners -- especially the people from the city.

In the Legislature we must take into consideration those people.

For those reasons the General Assembly has done well in legislating on a statewide level. Leaving this in here will allow the Legislature to continue to do the good job that it has.

THE PRESIDENT: Delegate Needle.

DELEGATE NEEDLE: Mr. Chairman, I will be very brief and in order to obviate the necessity of my rising twice, I mean this to apply to the following amendment.

One of the purposes of this Local Government Committee and this Convention was to limit the ability of the General Assembly to enact local legislation and to emphasize that we have stated it in the negative in Section 3.23 in this article. We have written, therefor . an absolute prohibition against local legislation with certain exceptions.

The Local Government Committee considered the

problems of natural resources and education and at the specific requests of representatives of those interests we provided an enabling provision in the Local Government Article which would permit the General Assembly, which would permit a county or any number of counties to enact laws which the other counties might not have the ability to enact. This provision was written in specifically for that and other purposes. Now we find they want an absolute prohibition,or exception rather, in the Constitution permitting the General Assembly to enact local legislation in those areas. They want their cake and eat it too.

Don't whittle away at the efforts of the Local Government Committee and this Convention on one of its most meritorious causes. Support this amendment and the amendment to delete the exception for education.

THE PRESIDENT: Any other delegate desire to speak in opposition?

Delegate Churchill Murray.

DELEGATE CHURCHILL MURRAY: Mr. Chairman and ladies and gentlemen, I came here completely committed to the principle of the Legislature enacting general laws only.

The tide has risen and when one stops to think about the discussion here this morning, I changed my position. I think that you have got to leave the counties in a position either for the Legislature to enact or the local governments to really rose, enact their own peculiar laws as the need arises. I/ however, to tell you what perhaps you are not familiar with, that the development of the Chesapeake Bay, the development of its environs, has taken a new turn.

You may know that the Johns Hopkins University, the University of Maryland, and the Smithsonian Institute have combined to develop information about the life of the bay. I think that on a long-range basis this will become a factor.

THE PRESIDENT: Delegate Boyce.

DELEGATE BOYCE: I move the previous question.

THE PRESIDENT: Is there a second?

(The motion was duly seconded.)

THE PRESIDENT: Delegate Macdonald.

DELEGATE MACDONALD: Point of order.

THE PRESIDENT: State the point.

DELEGATE MACDONALD: I rose five or ten minutes ago and asked permission to ask Delegate Moser a question.

I have been waiting to be recognized.

THE PRESIDENT: The Chair followed the rule that whenever a delegate desires to speak, it has priority over a delegate desiring to ask a question. There are at the moment, I judge by the number standing, a half a dozen delegates who would desire to speak.

Delegate Boyce, would you be willing to withdraw your motion to permit Delegate Macdonald's question to be asked on the Chair's assurance that he will recognize you immediately after?

DELEGATE BOYCE: I certainly will, sir.

THE PRESIDENT: Delegate Moser, will you take the floor to respond to a question?

DELEGATE MOSER: I will, sir.

THE PRESIDENT: Delegate Macdonald.

DELEGATE MACDONALD: Delegate Moser, in these remarks were you speaking for the Local Government Committee or for yourself?

THE PRESIDENT: Delegate Moser.

DELEGATE MOSER: I made it clear when I started that I was speaking for myself.

THE PRESIDENT: Delegate Boyce.

DELEGATE BOYCE: Mr. President, I move the previous question.

THE PRESIDENT: Is there a second?

(The motion was duly seconded.)

THE PRESIDENT: For what purpose does Delegate Ulrich rise?

DELEGATE ULRICH: I would like an opportunity to speak on this subject. I don't think everybody in this room completely understands the Local Government Committee.

THE PRESIDENT: The only thing the Chair suggests in those circumstances is that those who feel that if they are in the majority, I would assume they would vote against the motion for the previous question.

The Clerk will ring the quorum bell.

The question arises on the motion to order the previous question on the adoption of Amendment 20. Because there is apparently a division of opinion, the Chair will take a rollcall vote.

A vote Aye is a vote in favor of ordering the previous question on the adoption of Amendment 20. A vote

No is a vote against.

Cast your vote.

(Whereupon, a rollcall vote was taken.)

THE PRESIDENT: Has every delegate voted? Does any delegate want to change his vote?

The Clerk will record the vote.

There being 62 votes in the affirmative and 49 votes in the negative, the motion is adopted.

The question arises on the adoption of Amendment 20. A vote Aye is a vote in favor of the adoption and a vote No is a vote against.

(Whereupon, a rollcall vote was taken.)

THE PRESIDENT: Does any delegate desire to change his vote?

The Clerk will record the vote.

There being 46 votes in the affirmative and 65 in the negative, the motion is lost and the amendment is rejected.

Delegate Freedlander, do you desire to offer Amendment F?

DELEGATE FREEDLANDER: Yes, sir.

THE PRESIDENT: Pages will please distribute Amendment F.

This will be Amendment 21. The Clerk will read the amendment.

MR. QUILLEN: "Amendment No. 21 to Committee Recommendation LB-1, LB-2, and LB-3 as amended by Report No. S&E-16. By Delegates Wagandt, Borom, Boyles, Bradshaw, Bryson, Fox, Freedlander, Gleason, Macdonald, Marion, Mitchell, Needle, J.H. Smith, Sollins and Ulrich.

"On page 9 Section 3.23. General Application of Laws in line 2 strike out the following words: 'pertaining to public education;'."

THE PRESIDENT: The amendment having been submitted by Delegate Freedlander and seconded by the other cosponsors, the Chair recognizes Delegate Freedlander.

DELEGATE FREEDLANDER: Would you add Delegate Raley as a cosponsor?

THE PRESIDENT: Delegate Raley is added as a cosponsor.

DELEGATE FREEDLANDER: Throughout this Convention we have heard much about education as a statewide function. We provided "that the State shall provide by law for a statewide system of pre-public schools," this did not mean 24 different systems, one for each county, but a statewide system with optional variations by the county according to the desire of the citizens of each county as provided in Section 3.23.

Under the proposal as now stated in the section on General Application of Laws, the General Assembly could require Baltimore City to have an elective school board and Montgomery County to switch to an appointive board. This is contrary to the intent of the Local Government Article which envisioned the General Assembly acting by public

general law in the field of education, by law which in its terms and effects was applicable throughout the State.

The Local Government Article did provide that in special situations the General Assembly could empower specific counties to enact their own local laws.

Let me read a couple of sentences from page 27 of Committee Memorandum LG-1.

"This local option method would permit the General Assembly to recognize special problems and institutions existing in some counties but not in others. We intend, for example" -- I am continuing to quote from the memorandum -- "that it permit the General Assembly to authorize Montgomery County to have an elective school board and Baltimore City to appoint its own school board even though providing that boards in other counties be appointed by the governor."

If I may carry this a little further, I do not believe that it was intended that the General Assembly be given the power to dictate to Montogomery County by local law, that it must have a local school board nor that it must have a local school board nor that the General Assembly must

dictate to another county that it must have an elective school board. If education is retained as a general application of general law provisions, that is exactly what we are permitting. If education is removed from the section on general application of laws, the subject of education will have to be treated,as we have consistently held during this Convention,as a statewide function. Local variations can be permitted under the local options which allow the General Assembly to empower a county to exercise any power or perform any function which has been denied to other counties. Also, since education is one of the major departments of the State, the provision of this section will authorize the General Assembly to enact laws "providing for" or "regulating the powers of departments or agencies of instrumentalities of the State which perform a State and not a local function."

Would this not also provide sufficient leeway for any variation in statewide application of laws? The inclusion of education as an exception to the general application of laws is a very substantive and far-reaching change from previous actions of the Local Government Committee and the Committee of the Whole. It was not in the

original proposal of the Local Government Committee.

The previous colloquies between Delegates Moser, Lord, and others dealt with the ability of the General Assembly to permit counties to vary the structures of their school board and local school administrations. It did not deal with local public laws of the old Maryland tradition. Delegate Moser was just quoted on December 28 in the Evening Sun as saying that since colonial times local governments in Maryland have operated on a tight rein exercising only those powers expressly granted by the State. The Local Government Article reverses this. The counties would command their own local destinies. No longer would they have the local assemblymen handle a great volume of their business.

Mr. Moser said the percentage of local laws were somewhere around 52 percent. If we keep adding exceptions, we will be right back where we started and the General Assembly will be just as much involved with local legislation as it ever was. The exceptions recommended by the Local Government Committee dealt primarily with geographically limited items such as the creation of multi-county

governments, alteration of county boundaries, and appropriations.

The entire thrust of the Local Government Article has been to break the deep-seated custom of local legislation and free the General Assembly to concentrate on statewide matters. If education is truly a statewide function, as has been so well and ardently argued, let us treat it as such and not relegate it to the continued tradition of public local laws.

I urge you to support this amendment.

Thank you.

THE PRESIDENT: Delegate Moser.

DELEGATE MOSER: Mr. President and ladies and gentlemen, again I rise as an individual and not as a Committee chairman or on behalf of the Committee itself.

What I said earlier about natural resources I think applies with somewhat greater force to the field of public education. As near as I can determine in each of 1966 and 1967 there were three local laws pertaining to education passed by the General Assembly. If you look in Article 77, the only local laws that are passed pertaining to education

of the kind that this would permit, this exception would permit, the only kind that in fact the Legislature really does pass are those relating to school boards and what they do. They will say Somerset County may have a five-man school board, some other county may have a seven-man school board and the terms of office and so on vary.

Now, Delegate Freedlander has aptly stated what the situation would be if this provision comes out; that is to say that the General Assembly would have to act uniformly with respect to local school boards and any other aspect of public education but that they could pass a law which would empower a county to provide its own local variations. The problem with this is that it requires the county government to act, whereas this exception would allow the General Assembly to act and to make the variations.

My understanding of what the General Provisions Committee as a unit, both the majority and minority, intended with respect to the so-called compromise that they arrived at was that Article 77 could be continued just exactly as it is, and I think that in order to do that, one must have this exception in Section 3.23 as it is proposed.

THE PRESIDENT: Any other delegate desire to speak in favor?

Delegate Mentzer.

DELEGATE MENTZER: I wish to support this amendment, Mr. President. The intent of the Style Committee was not to place its stamp of approval on the items relating to national resources and education but rather to call it to the attention of the Convention because of the discussions that arose over the words "by law, general, or otherwise" when these were discussed earlier.

The General Assembly in the areas of natural resources and education will often be enacting minimum laws, and local government under the "shared powers" concept would be free to pass more restrictive or more liberal laws as long as they were not in conflict with the statewide laws.

I feel that this is a very desirable state of affairs and that we should support this amendment.

THE PRESIDENT: Delegate Maurer.

DELEGATE MAURER: I rise to oppose the amendment. When I spoke against having "local board" in the Constitution, it was with the knowledge and understanding that the

General Assembly could pass laws which varied from county to county, notwithstanding what Delegate Freedlander has said. I believe the issue before us is whether the General Assembly retains entirely within its purview, varying the laws if necessary to meet diverse conditions in the State or whether to meet these diverse conditions the General Assembly adheres to the principle of uniform laws and fragments education. But this is the point. When you give it out to local government, you give it to local commissioners, local charters or local councils, not necessarily to local boards.

The governance of education is different than any other function of government in this State. You operate. except in Baltimore City,through local school board, a state school board, and both of these powers stemming from the General Assembly.

Baltimore City is different. It goes way back at least to 1872. The powers of the State with respect to education have been given to the mayor and council in Baltimore. Under the Constitution which we are considering, Baltimore will be enabled to continue to have its practice,

longstanding practice, and there is a real question whether we have had a statewide school system in the past. We have had a system of schools in the counties and another system in Baltimore City. Baltimore City will be able to continue its practice. It is in the counties where you will have this change, where you will have either uniform laws or new powers given out to local governments, not necessarily to local school boards.

I believe that this is the wrong time to begin to take away from the General Assembly to a greater degree than has existed before its overview of education. Conditions in this nation and education are changing very rapidly. You have the intervention of the Federal Government. We are trying to build a nationwide policy but not a federal policy, and I think it is important that we have in this State House and in other states houses across the nation a good overview of education so that we have 50 strong states dealing with the Federal Government and not just 20,000 school districts dealing with the Federal Government.

I urge you to oppose the amendment which is before you.

THE PRESIDENT: Delegate Borom.

DELEGATE BOROM: Mr. President and fellow delegates, the Local Government Committee commentary, if you would take the time to read it, indicates that the Committee very carefully for days and weeks studied this particular issue. We looked at all the different angles and,notwithstanding any statements our chairman will make, keep in mind we are a committee of 19 and we made certain decisions. We already brought to your attention that on the first reading in this particular section we made no reference to education as a local legislation matter.

Delegate Maurer has referred to the fact in Article 77 that the General Assembly may permit counties to vary terms of office. We have discussed and strongly suggested that no county in this State may lose what it presently has unless it is for the benefit of the State educational system in general.

As we talked about education coming under the rubric of public general law that the State could pass a public general law and to permit variances by county but not spelling it out, that each county would have the option

of selecting or electing its school board as it sees fit.

I would agree with Delegate Maurer that the General Assembly should be concerned increasingly about education, but it should be on a statewide basis. The State Department of Education more and more in recent months has begun to be aware of the fact that as a statewide agency it has the responsibility to guarantee and insure the quality of education on a statewide basis and not leave it to counties to make the decision as to how their school system shall be run and to what quality and to what detriment of the pupils of this county. For that reason I would assure you that the majority is on board and feels no school system in the State of Maryland is going to be harmed and that as nearly as possible any prevailing condition which happens to be dear to the hearts of those residents of that county should remain.

I think it is unfortunate on the limited basis of the colloquy on this floor certain decisions have been made that the direction of the Committee of the Whole in first reading has been completely lost.

As I said to members of the Style and Drafting

Committee, unfortunately I think they have been lobbied by special interests.

I urge you to keep in mind that the Local Government Committee as a whole has studied this issue and I hope that you will follow the recommendation of the Committee as a whole. Granted the Chairman is a very influential person, and I would ordinarily suggest that you follow the lead of the Chair, but I think in this instance the majority of the Committee has decided and will stand behind this particular provision.

THE PRESIDENT: Delegate Pullen.

DELEGATE PULLEN: Mr. President, I think it is essential that this provision stay in to preserve the very purpose of the statewide system of education. If you remove this provision, then any county in the State can begin to legislate in respect to its school boards, its budgets, or anything else.

The General Assembly of Maryland for 100 years has interfered but little and has practically no laws affecting any one county. It has, however, given the choice of the means by which a county can select a school board.

It is entirely different. I think it is necessary for the statewide system that we oppose this amendment.

THE PRESIDENT: Any other delegate desire to speak in favor of the amendment?

Any delegate desire to speak in oppostion?

Delegate Wheatley, do you desire to speak for or against?

DELEGATE WHEATLEY: In opposition.

THE PRESIDENT: The Chair recognizes Delegate Lord.

DELEGATE LORD: I also want to oppose the amendment.

THE PRESIDENT: The Chair recognized you because you were on the floor earlier.

DELEGATE LORD: Mr. President and fellow delegates, what is being raised here today is the specter of eroding the concept of general laws and it has been maintained that unless this amendment is adopted that we will be right back where we started with a lot of local legislation coming from the State House in Annapolis. In the field of education the facts just do not bear this out. The

General Assembly has had the power to legislate locally for 100 years in this area. There are exactly 108 pieces of legislation which relate to education. That is in an article that is 300 sections long. This is a very careful use of this power. I have reason to believe that the power will continue to be used very sparingly by the General Assembly but it is a power that must be retained by the General Assembly.

If you look at the rather rare exceptions and local law exceptions, you will find that they are very beneficial to a statewide system.

As Delegate Moser and Delegate Maurer indicated a number of them deal with the way boards are to be composed. If there is to be any State perspective, this has to be retained. Some deal with pensions and retirement systems in counties which can't do it by themselves. This is beneficial. This shouldn't only be left to enabling legislation requiring further action in the county. This is one point on which the General Provisions Committee is virtually unanimous,and the Local Government Committee is in the main opposed to this amendment.

I urge that this amendment be defeated and I rest my remarks with those of Delegate Moser and Delegate Maurer.

THE PRESIDENT: Any delegate wish to speak in favor?

Delegate Key.

DELEGATE KEY: I have an inquiry.

THE PRESIDENT: Parliamentary inquiry?

DELEGATE KEY: It is to straighten out a question in my mind.

THE PRESIDENT: State the question.

DELEGATE KEY: If this section is taken out --

THE PRESIDENT: You mean the clause rather than section.

DELEGATE KEY: Yes, this clause, can the General Assembly make a public general law that reads as Section 5 of GP-6 which would enable the school boards to do as this amendment would?

THE PRESIDENT: I am not sure I understand your question. Do you mean if this clause is omitted would the General Assembly by general law be able to pass a statute similar to Section 5 or do you mean would the General

Assembly by law be able to authorize a local government to pass such a statute?

DELEGATE KEY: I mean would they be able to pass a law giving the local option just as Section 5 does? That is what I think I mean. In other words, the proponents of the local school system being included in the Constitution. I think were interested in the local governments being able to put the referendum to the people, the kind of school board they wanted. Can this be done by general public law?

THE PRESIDENT: The question is not easy to answer, Delegate Key, and the Chair will give an answer to the extent that I fully understand your question with the understanding that any delegate may dispute what the Chairman says.

If the clause covered by Amendment No. 21 is deleted, the General Assembly would not have the power to enact local legislation in the field of education. The General Assembly would retain the power to enact public general laws in the field of education as in any other field and the General Assembly would retain the power to authorize a county on an individual basis to enact local laws in the field of education.

In other words, the authorization by the General Assembly to the counties would not have to be by general law. It could be on a county to county basis and if by local option this is what you mean, that is the option to the governing board in any county to act subject to such standards as the General Assembly may prescribe. Then the answer would be in the affirmative that the legislature notwithstanding the deletion of

this clause would retain the power to enable the county to act in this field.

This is not the complete answer to the question and the most difficult part has to do with the decision of what is a public general law.

I hesitate to get into it because it is a matter that has been the subject of so much dispute. I think I can say that a public general law must apply statewide, but that does not necessarily mean that the public general law must apply with absolute uniformity in every area of the state. To illustrate, the General Assembly always has the power of public general laws to classify. It may make a law that says such and such shall happen in cities over five hundred thousand and so forth.

I think that is as far as the Chair goes in its desire to comment. Does any other delegate desire to speak in favor of the amendment?

Delegate Winslow.

DELEGATE WINSLOW: For whatever it is worth, I think that history should be kept straight. A few

minutes ago Delegate Lord gave the impression that it was to be assumed that a majority of the Local Government Committee was not behind this amendment. I would suggest a reading of the list of sponsors numbering nine and to that list add one more of Local Government, namely, Winslow, means ten of the Committee in opposition to this provision of the Drafting Committee.

THE PRESIDENT: Delegate Frank Robey.

DELEGATE FRANK ROBEY: Mr. President, I would simply like to say that I share some of the grave doubts that Delegate Key spoke of a few minutes ago. As long as we have those doubts, I would urge the Convention to oppose Amendment 21 and retain the phrase pertaining to public education in the Constitution.

Education is a state function. The power of the State Legislature over public education should be plenary or complete. If we adopt this amendment, it simply will not be. The authority over schools and school affairs is a central power which should reside in the legislature of the State. It is for the lawmaking power to determine whether the authority shall be exercised

by the State Board of Education or distributed to county or to city school systems.

As the power over schools is a legislative one, it is not exhausted by exercise. The legislature, having tried one plan, should not be precluded from trying another. It has a complete choice of methods and it should have the complete choice. They should be able to change the plans as often as they deem necessary or expedient.

While here, I should direct my comments to two other areas. The basis of establishing school systems or districts or altering their boundaries should vary, but it is clear that the legislative branch of government should have this authority to create or alter school districts in the state.

It may not assign to them the same boundaries as counties. It may classify them on reasonable bases such as operation for the operation of various school laws. A school system or district is legally an agent of the state responsible for the state function of public education within a designated geographical boundary.

Thus, the school system or district should be subject to the complete control of the state. It follows from this concept, if you would accept it, that education as a state function that school board members then are state officers as distinguished from local government officers. This is true regardless of how the school board members are to be selected.

School systems and education are state functions. I believe that by adopting this amendment, you are diluting the state function which probably rests with the General Assembly and turning the control of the state schools over to local county governments.

THE PRESIDENT: Any other delegate desire to speak in favor?

Delegate Clagett.

DELEGATE CLAGETT: Mr. President, I rise to state that I am in favor of the amendment and would be the eleventh member of the Local Government Committee to favor this amendment. I shall not, however, go into further detail.

THE PRESIDENT: Delegate Wheatley.

DELEGATE WHEATLEY: Mr. Chairman and ladies and gentlemen of the Convention, I had quite a bit of discussion on this amendment. I wasn't sure, frankly, whether it was a good thing or a bad thing to carry out the intent of the Education Committee. I have done a little bit of homework over the night, and I think that the best that can be said for the amendment is that it would perhaps create new areas of doubt as has been suggested.

Certainly, in these times of great tumult in the field of education it is not for us to add further confusion or doubt. If you look at the list of sponsors, a great point must be made of those on the Local Government Committee. I fail to see the names of any that were in General Provisions who considered any education. It would seem that those considered this for twenty-three years of here, a difficult area where the balance between state and local is little understood, should be given the benefit of the doubt as to telling what the intention was of the majority and minority. There is no other agency in which local governments have contributed forty

per cent of their budget.

Forty per cent of the budget of local school budgets is submitted by the State. It is tenuous to state that the State must take the either choice and say either all of you do it or we can't make any of you do it. This is the real crux. Must the State say either all of you do it or none of you have to do it unless you want to. This takes away the whole argument of flexibility that I heard so many times in this Convention and for this reason and for the other reasons so aptly expressed by those who opposed the amendment, I certainly hope that this Convention will not create further areas of doubt where there is presently no doubt and we will not have to devise some artificial means in the future by classification or some other vague term where we set up artificial classes to allow for them, but would leave it as amended by Style and Drafting and the Committee on General Provisions which dealt with education. I hope you will support these two committees and strike out this attempt to strike out what has been a workable provision. I urge your rejection of the

amendment.

THE PRESIDENT: Any other delegate desire to speak in favor of the amendment?

Delegate Hopkins.

DELEGATE HOPKINS: Mr. President, I move the previous question.

(Whereupon, the motion was seconded.)

THE PRESIDENT: The question arises on the motion to move the previous question on the adoption of Amendment 21. All in favor say Aye; contrary No.

The Ayes have it, and it is so ordered.

The Clerk will ring the quorum bell.

The question arises on the adoption of Amendment No. 21. A vote Aye is a vote in favor of the adoption of the amendment which would delete the phrase. A vote No is a vote against the amendment.

Cast your votes.

Has every delegate voted?

Does any delegate desire to change his vote?

The Clerk will record the vote.

There being forty votes in the affirmative

and seventy-seven in the negative, the motion fails and the amendment is rejected.

The earlier amendment which was not printed when discussed, Amendment 19, is now available. Will the pages please distribute the amendment marked Amendment 19. Amendment LL is Amendment No. 19. You have already acted on it.

The record vote heretofore distributed with respect to 3.28 marked Amendment 18 to LB-1 is marked Amendment 18 in error. It is to Amendment 17. Please correct your copy, your copy of the record vote should be marked Amendment 17 to LB-1.

Delegate Moser, does the Chair understand you do not now desire to offer your Amendment GG?

DELEGATE MOSER: That is correct, Mr. President.

THE PRESIDENT: The Chair has no further amendments to Section 3.23. Are there any further amendments?

Pages will please distribute the amendment marked II.

Delegate Gill.

DELEGATE GILL: Point of inquiry concerning the numbers on the amendment. Amendment S, Delegate Grant's amendment was No. 17, the first amendment we had today?

THE PRESIDENT: Yes.

Delegate Gill.

DELEGATE GILL: According to my record, Y would be 18. You just told us to change it to 17. That gives us two seventeens. The amendment stays like it was.

THE PRESIDENT: On the tally sheet to which the Chair referred that is marked Amendment 18. It should be marked Amendment 17 so that you can identify. The numbers are 82, 52, and 8.

This will be Amendment 22.

The Clerk will read the amendment.

MR. QUILLEN: Amendment No. 22 to Committee Recommendations LB-1, 2, and 3 as amended by S&D-16 by Delegate Gallagher: On page 4 Section 3.11 Limitation on Appointment of Legislators in line 28 strike out the word "his" and insert in lieu thereof the word "the"; and

In line 29 before the comma insert the following: "for which he was elected or appointed", and

In line 32 strike out the word "his" and insert in lieu thereof the word "such".

THE PRESIDENT: The Chair was in error in receiving the Amendment 22 at this time. It pertains to a section not on the special order. It requires the suspension of rules for its consideration.

The Chair will recognize Delegate Gallagher at a later time. Strike the number "22" from the amendment. Retain the amendment. We will reach it later.

Any amendments to any of the sections under consideration? Sections 3.03, 3.04, 3.19, and 3.23.

That is, 3.14. 3.19 was acted upon.

There are no amendments.

We did not at yesterday's consideration approve the amendments recommended by the Committee on Style with respect to Sections 3.03 and 3.04. I will do so at this time.

The question arises on the adoption of the

amendments recommended by the Committee on Style in Sections 3.03 and 3.04 on Committee Recommendation LB-1, LB-2, and LB-3. Is there any discussion?

Are you ready for the question?

The question arises on the adoption of the amendments proposed by the Committee on Style on Sections 3.03 and 3.04 of Recommendation LB-3.

Cast your votes.

Has every delegate voted?

Does any delegate desire to change his vote?

The Clerk will record his vote.

There being ninety-eight votes in the affirmative and three in the negative, the motion is carried. The recommendations made by the Committee on Style are adopted.

Before putting to you the question of adoption on second reading of Sections 3.03, 3.04, 3.14, and 3.23 as amended, the Chair has an announcement to make in connection with Section 3.23 and particularly Amendment 16A. I will choose my words carefully in the sincere hope that what I say will be accepted without further

comment or contradiction by the opposing forces.

In view of the action by the Convention with respect to the amendments as to natural resources and education, none of the delegates heretofore at odds over the issue of Amendment 16A will move the reconsideration of the vote by which the amendment was adopted which means that the amendment will stand. That is the Claqett Amendment. With the understanding that the Chair will make this statement, if not in further clarification, at least in further emphasis, of what has already been said.

It is recognized that the distinction between the proposition posed by Amendment 16 and that posed by Amendment 16A is a very fine one, about which even lawyers would disagree, but as to which laymen would have a great deal of difficulty in even appreciating the line of distinction.

Nevertheless, it is felt by all concerned that the distinction is a real one although the opposing sides have different views as to how substantial the difference is.

The difference is illustrated by the colloquy

between Delegate Clagett and the Chair yesterday and all have agreed that that colloquy accurately states the situation. So that the real difference between Amendment 16 and Amendment 16A, indeed, is one largely of form. That is the manner in which the legislature may or may not act under the proposed language is largely a matter of form.

However, it is felt by those favoring the Amendment 16A, the Clagett Amendment, that while it is largely a matter of form, the form is quite substantial and has a psychological or practical or pragmatic effect which would assist greatly in carrying out the policy intended by this Convention to limit the ability of the legislature to act in the field of local legislation.

Under the Clagett Amendment, the General Assembly may enact laws that are not public general laws in the situations listed in Section 3.23, but it may not in enacting such a public general law exempt from its operation named counties.

The distinction, therefore, becomes this:

That in the eight situations enumerated in the section, the General Assembly is not bound to act by public general law. It may, therefore, enact laws on a county by county basis, and there is no restriction on this so that it could enact a law which by terms was applicable to one named county, two named counties or any number of named counties. It could not, however, enact a law which by its terms was apparently a public general law, but contained an express exception of a named county or counties. The difference in form, therefore, as indicated by the colloquy between Delegate Clagett and the Chair yesterday is that a law which in one of the eight areas indicated was made expressly applicable to twenty-two counties by name, for instance, would be proper, but a law to accomplish the same purposes dealing with the same areas which said that it was statewide, but excepted the other two counties of the state would not be proper.

I think the statement that I have made is an accurate resume of the discussions that took place after the session last night and this morning. Is there any comment?

The question now arises on the adoption on second reading of Sections 3.03, 3.04, 3.14, and 3.23 of Committee Recommendation LB-1, LB-2, LB-3, as amended. A vote Aye is a vote in favor of the adoption of these four sections as amended. A vote No is a vote against.

Cast your votes.

Has every delegate voted?

Does any delegate desire to change his vote?

The Clerk will record the vote.

There being ninety-two votes in the affirmative and seventeen in the negative, Sections 3.03, 3.04, and 3.23 of Committee Recommendations LB-1, LB-2, and LB-3, as amended, are adopted on second reading.

The next item on the agenda is a consideration of the Report S&D-12 of the Committee on Style, Drafting, and Arrangement. This is a report with respect to Committee Recommendation GP-6.

The Chair recognizes Delegate Penniman and requests that he come forward to the reading desk.

The Chair suggests that Delegate Boyer take the desk for Committee Chairman. Delegate Penniman.

DELEGATE PENNIMAN: Mr. President, on the section on education, you will notice first of all that it is a separate article and that Section 8.01 is public education.

The Committee on Style changed the word "State" in several instances to read "General Assembly" since it is obviously the General Assembly which does by law act and not the State.

In line 8 and in line 12, was an error on the part of the Committee in typing. This was another one of those items that was done at the last minute and a change which had been made by the Committee in line with what we believe to be the interpretation of the word "provide" in this instance was inadvertently omitted, so that in line 8 it should read "establish and maintain" and the same thing should be true in line 12. It shall also establish and maintain.

Please note this is one of the usual instances of the word "provide". Here "provide" means not only provide for in the sense of law, but also to supply and I think this is a reasonable interpretation of the meaning of the words

and not any special addition on our part.

THE PRESIDENT: Delegate Penniman, the Chair would understand the word "maintained" to mean to pay the cost of.

DELEGATE PENNIMAN: This is what our understanding from the members of the Committee talking to the Committee on Style was.

THE PRESIDENT: If this is intended it is such a radical departure from anything previously discussed I think we ought to have a comment from the Chairman of the Committee.

DELEGATE PENNIMAN: I have no objection to leaving it out and having it come in as an amendment under those circumstances.

THE PRESIDENT: Delegate Boyer, do you or Delegate Wheatley desire to comment?

DELEGATE BOYER: I wonder if you would re-state the question.

THE PRESIDENT: Delegate Penniman has indicated that the Committee on Style inadvertently omitted on line 8 two words to follow after the words "establish and maintain"

so it would read "The General Assembly by law shall establish and maintain a statewide system of free public schools".

DELEGATE PENNIMAN: And the same change in line 12.

THE PRESIDENT: The Chair pointed out that the word "maintain" would mean that the General Assembly should provide for State payment of the cost of the system and Delegate Penniman said that was his understanding of what the Committee on General Provisions intended of the use of the word "Provide".

DELEGATE BOYER: After re-checking with the Committee, "maintain" should accompany the word "establish".

THE PRESIDENT: It is intended that this be a complete reversal of the present system of the financial support of public education in the State.

DELEGATE BOYER: This is the existing language in the present Constitution and we were following that example.

THE PRESIDENT: What section do you refer to, Delegate Boyer?

DELEGATE BOYER: That is what we are trying to find also, sir.

I would like to quote from Article 8 of the present Constitution. This was our foundation.

"Section 1. The General Assembly, at its First Session after the adoption of this Constitution, shall by Law establish throughout the State a thorough and efficient System of Free Public Schools; and shall provide by taxation, or otherwise, for their maintenance."

We were trying to follow as closely as possible the precedent which has worked so well over the last century.

THE PRESIDENT: The Chair suggests that the use of the word "maintain" in this context is quite different from the use of the word in the quoted phrase in Article 8 and my concern is that as I remember the presentation of the report of this Committee there was no suggestion that the System of Free Public Schools should be maintained solely by the State rather than by the counties.

Now, maybe that is not the intention now, but the Chair is very much concerned at the use of the words coming in force first time without some clear understanding

of what is intended.

The sentence would read as amended, "The General Assembly by law shall establish and maintain a statewide system of public schools", and in line 11 the sentence would read "The General Assembly by law shall also establish and maintain any other public educational institutions and services that may be necessary and desirable", and so forth.

DELEGATE BOYER: Mr. President, like all other honest disputes it could be debated on either side of the record. By adding the words "and maintained" would mean concurrent jurisdiction with the local subdivisions and that it can be delegated to the local subdivisions as a practical matter it is done now.

THE PRESIDENT: Any further discussion?

Delegate Rybczynski.

DELEGATE RYBCZYNSKI: What is wrong with the word --

THE PRESIDENT: Just a second. This is so important that the Clerk will please ring the quorum bell and get all the delegates in the corridor and in the lounge

to the chamber.

Delegate Boyer.

DELEGATE BOYER: Mr. President, since there does seem to be some honest dispute and apprehension on this, we might suggest respectfully if the Convention will give us unanimous consent to retain the exact wording that the present Constitution has in Section 1, Article 8, and we would suggest this amendment on line 7, "The General Assembly by law shall establish and provide for the maintenance of a statewide system of free public schools".

What this will intend to do is to allow the General Assembly by statutory law to delegate to the various political subdivisions, the various school boards, the taxing power and the right to maintain their own private free public schools and that is the existing statutory provision, the constitutional provision which is implemented by the statutory law.

THE PRESIDENT: If there is to be such an amendment, the Chair thinks it should be printed so that we can see it and establish a record on it. I don't think it should be made by interlineation.

Would one of the pages please get Mr. Lee Benson and get him to come to Mr. Boyer's desk immediately?

Delegate Rybczynski.

DELEGATE RYKCZYKSKI: I would like to direct a question to Chairman Boyer.

Chairman Boyer, in view of the fact that you are interested in maintaining the status quo as to contribution and the method, may I suggest that you use the exact same language as it now stands and simply state the General Assembly issue, by law, provide for a -- in other words, the same language that you came out of Committee with.

This is the consensus back here frankly and we are hoping that you will do that.

THE PRESIDENT: Delegate Boyer.

DELEGATE BOYER: We respectfully approve the suggestion and this is what we are trying to accomplish. We are trying to keep what has seemed to be a very workable and practical system without rocking the boat too much by any change of the language. This was the intention of my suggested amendment which will be printed. It will add

the words "and provide" by maintain, as well as maintenance, but we will doctor that up so you will have that before you.

THE PRESIDENT: Delegate James.

DELEGATE JAMES: I would like to inquire why the word "State" was eliminated and the term "General Assembly" substituted. This is a responsibility basically of all three departments of the government at a State level. Certainly the Governor has his responsibility and administrative responsibilities and that sort of thing. It just seems to me that the language of the present Constitution is perfectly adequate. I see no reason for changing it.

THE PRESIDENT: Delegate Penniman.

DELEGATE PENNIMAN: Wherever there has been an establishment of something by law, we have said throughout the Constitution, we have said the General Assembly by law which would include both the General Assembly's action and the approval by the Governor or the overriding of the Governor's veto.

This is simply to be consistent throughout the whole of the document.

THE PRESIDENT: Delegate Boyer.

DELEGATE BOYER: I might add by supplementation, Delegate Penniman, this is exactly the existing language in the present Constitution, the General Assembly.

THE PRESIDENT: Delegate Adkins.

DELEGATE ADKINS: Mr. President, am I in order in speaking to the proposed changes or am I premature?

THE PRESIDENT: I think you are premature in view of the comment Delegate Penniman just made to the Chair. I think you better make it on the floor, Delegate Penniman.

DELEGATE PENNIMAN: The comment I made to the Chair was that under the circumstances, I would withdraw the suggestion of the addition "and maintain" and leave it to the Committee to come in with its amendment.

When we had put it in initially it was with the assurance of the members of the Committee that this was the intent within the current meaning of the law. I misstated earlier in answer to the question of the Chairman.

THE PRESIDENT: I take it therefore that Delegate Boyer intends to propose an amendment of substance and I don't think further comment on the question now is needed.

Delegate Adkins.

DELEGATE ADKINS: May I simply say that at the appropriate time I should like to move not to concur to the proposal of the Committee on Style and return this to the legislative draft. This has a legislative history. It is a treacherous subject to operate on in a short time.

THE PRESIDENT: Delegate Gleason.

DELEGATE GLEASON: With respect to the changes, I would like to suggest to the Chairman I am not sure that that language, even using the language in the existing Constitution should be applied to the second sentence of that first section because I do think that would go much beyond the action of the Committee of the Whole.

THE PRESIDENT: Delegate Boyer.

DELEGATE BOYER: I will take Delegate Gleason's suggestion into consideration. At first blush I would agree with him.

THE PRESIDENT: Delegate Henderson.

DELEGATE HENDERSON: In the present Constitution, the reference has been to what it provided, but what it says is, "that it shall provide by taxation or otherwise for their maintenance". That is different from what is

being said here that the State shall maintain it.

THE PRESIDENT: Delegate Pullen.

DELEGATE PULLEN: I think, Mr. President, that Judge Henderson asked the question that I wanted to ask, but maybe it needs a little amplification. I can't quite see the reason for the question, here.

May I read Section 1? The General Assembly at its first session after the adoption of this Constitution shall by law establish throughout the State a thorough and efficient system of free public schools and shall provide by taxation or otherwise for their maintenance.

Now, I can't quite understand your trepidation at the use of the word "maintenance". What is the distinction between "maintain" and "maintenance"?

THE PRESIDENT: I don't think there is any distinction, Delegate Pullen. As Delegate Henderson just pointed out, the Constitution says "The General Assembly" shall provide by taxation or otherwise for the maintenance and pursuant to that constitutional maintenance, the General Assembly has provided for the support of public education largely local. To leave out the "or otherwise"

and to include in this section the phrase "The General Assembly by law shall establish and maintain a state-wide system of free public schools" to the Chair meant that the state should pay the cost of maintaining the system of schools.

I suggested that this was a departure from what had been previously discussed in the Committee of the Whole.

Delegate Pullen.

DELEGATE PULLEN: May I ask Chairman Boyer a question? It was not the intent, if I understand it, to change in any way the concept of support of public education or its control. I hope that this Convention on this most important matter will not get lost in words. I am quite sure --

THE PRESIDENT: It was exactly for that reason, Delegate Pullen, that the Chair raised the question. I was afraid that we were by inadvertent acquiescence changing a word that no one really wanted to change.

DELEGATE PULLEN: I appreciate your concern.

THE PRESIDENT: Delegate Gallagher.

DELEGATE GALLAGHER: It appears to me that if this change is carried out that it will do substantial damage and depart in significant fashion from what I thought was a compromise which this Convention reached and I must say that when the time comes to restore the original language which the Committee of the Whole adopted, I certainly hope we will be given an opportunity to support that position.

THE PRESIDENT: Very well.

Delegate Boyer, you will have the opportunity over the lunch recess to prepare the amendment. There will be a chance to consider it further.

Delegate Penniman, I am sorry that I so rudely interrupted your presentation, but I am frank to say that the Chair was startled. You may proceed.

DELEGATE PENNIMAN: In Section 8.02 we had as I think was agreed in the discussion the other day when the first presentation came on 3.23 that the Section 8.02 would be headed "Public Higher Education" rather than merely "Higher Education" since there were some questions raised with respect to that, otherwise the

change is "as is prescribed by General Assembly" Is the insertion of the "General Assembly by law" from line 4 bringing it up where it said "as the General Assembly may deem to be appropriate". I understand there are some questions about that latter withdrawal. It seemed to the Committee that was the same thing as in the last sentence.

Are there any questions of the Committee Chairman?

Delegate Henderson?

DELEGATE HENDERSON: Don't the words "their funds" introduce a different concept?

DELEGATE BOYER: It is the funds which have been appropriated to them so there is no intention.

THE PRESIDENT: I am not clear. Were you suggesting a modification that instead of expenditure of their funds it would read the expenditure of the funds appropriated to them? I am not sure whether I understood you.

DELEGATE BOYER: No, in explanation of their funds, Delegate Henderson, I think, was asking whether I

was suggesting that they had funds somehow independent of those that had been deemed necessary and appropriated by the General Assembly and I did not mean any such change in meaning. It is only those funds.

THE PRESIDENT: That comment provokes a question from the Chair because some of the institutions do indeed have funds that are not appropriated by the General Assembly and I take it that it is intended that they would have power of supervision.

DELEGATE PENNIMAN: Yes, including those that are appropriated and those that they have from other sources.

THE PRESIDENT: Are there any questions of either Committee Chairmen?

Delegate Henderson.

DELEGATE HENDERSON: It seems to me that this is an unfortunate change so far from clarifying it confuses the issue. This is a matter that was debated at great length. It was represented as a compromise. It was adopted here with great difficulty and now this change of language in both sections disturbs me. I don't see why we can't return to the original draft in both cases.

THE PRESIDENT: The Chair is going to suggest because I think it will save time in the long run that rather than move to a consideration of either the amendments proposed by the Committee on Style or any other amendments at this time that instead we recess for lunch with the hope that the delegates will all have carefully read these sections and also Delegate Boyer will be able to more quietly prepare whatever amendments he desires to offer. I think in this way we can make better time after lunch.

Delegate Boyer.

DELEGATE BOYER: After talking with several members of the Committee and our legal staff, it is going to be our intention to come back with an amendment reaffirming the exact language that we had in the draft with the exception of the deletion of the word "State" and inserting in lieu thereof "General Assembly" to conform with the Style Committee and the existing language.

THE PRESIDENT: Delegate Henderson.(?)

(?) DELEGATE HENDERSON: Might I make one comment on the last sentence in Section 8.02. The Committee

conferred about this sentence with Delegate Lord who presented both of these sections to the Committee of the Whole as the spokesman for the minority point of view in the Committee and as I understand what his explanation and interpretation of the intent of this last sentence, the words "the funds thereof" meant, in effect, their funds and the last line, line 8, which has been deleted by the Committee on Style, was meant to refer to the words "additional powers which appear back up in line 5 and it is a little difficult to follow the modification of powers as set out with the language in line 8 and I had understood that Delegate Lord was going to try his hand at re-writing that last sentence to see whether or not he could get the expression contained in the last sentence earlier in the sentence so that it would read as he intended it to read but consistent with the other minor modifications that the Committee on Style had made, but I would suggest that it is not as clear as it might be if we allowed it to stand in the language as originally adopted by the Committee of the Whole.

THE PRESIDENT: Perhaps you could confer with

Delegate Boyer and Delegate Wheatley for a few minutes at the lunch hour.

Delegate Fornos.

DELEGATE FORNOS: When it is appropriate, I would like to be recognized on a point of personal privilege.

THE PRESIDENT: State the privilege.

DELEGATE FORNOS: I would hope that the Convention would join me in extending a warm welcome to a newspaper editor from southern Anne Arundel County, Mr. Otto Walters. (Applause)

THE PRESIDENT: Are there any announcements to be made by Committee Chairman?

Delegate Beatrice Miller.

DELEGATE BEATRICE MILLER: Mr. Chairman, I have a point of personal privilege.

THE PRESIDENT: State the privilege.

DELEGATE BEATRICE MILLER: I rise to speak most briefly concerning Section 1.17 of Article R&P. On considerable reflection it appears to me that the vote last night was not decisive. Rather it would serve to carry forward devisive forces in connection with the adoption of

this Constitution and this concerns me much. Therefore, in an effort to gain some true measure of compromise and consolidate all forces in support of the Constitution and to move any vestage of claim that the Constitution represents one privileged class, I intend to request consideration; I intend to offer different language which will not entirely please anyone, but it will not entirely displease anyone.

After time for the delegates to consider the language and make up their minds, I shall request reconsideration.

THE PRESIDENT: The re-consideration will require the concurrence of fifteen delegates.

Delegate Mitchell.

DELEGATE MITCHELL: I have that.

THE PRESIDENT: If you have it, you can let the Chair have it at any time.

Any other announcements?

If not, the Chair recognizes Delegate Powers.

Just a second. Any delegates present now and not present this morning may indicate their presence on supplemental roll call.

Has every delegate answered supplemental roll call?

The Clerk will record it.

Delegate Powers.

DELEGATE POWERS: Mr. President, I would like to ask all the members of the Committee on Calendar and Agenda to gather in the Senate lounge for a meeting immediately upon our recessing and I move that we recess until 2 o'clock.

THE PRESIDENT: Thank you.

All in favor signify by saying Aye; contrary, no.

The Ayes have it, and it is so ordered.

(Whereupon, at 1:05 o'clock p.m., the Convention recessed until 2 o'clock p.m., of the same day.)

THE JACK SALOMON REPORTING SERVICE

AFTERNOON SESSION

January 3, 1968 - 2:20 p.m.

THE PRESIDENT: The Sergeant at Arms will clear the aisle and close the doors.

The Convention will please come to order.

Roll call.

Has everyone answered roll call?

The Clerk will record the roll call.

There being a quorum present, the Convention is in session.

We will resume consideration under special orders of Committee Recommendation GP-6.

The Chair understands that there are no amendments to be offered which are germane to the amendments by the Committee on Style, but the request has been made to submit for separate action by the Convention the question of the adoption of the recommendations of the Committee on Style.

I think we can get at the problem confronting us much simpler in this manner: I think the amendments can best be handled and understood if we will take

them sentence by sentence in each amendment. Therefore, the question arises first on the adoption of the amendments recommended by the Committee on Style in the first sentence of 8.01, the sentence comprising all of lines 7 and 8 and including the words "public schools" on line 9.

I think I will have to restate the first question because I understand that there is a desire to concur in the part of the amendments suggested in the first section and not to concur in part.

The first question will thereby arise on the amendment recommended by the Committee on Style to strike the word "state" in line 7 and substitute the words "General Assembly by law".

Is there any discussion?

The question will arise on the adoption of this recommendation.

Delegate Adkins.

DELEGATE ADKINS: Mr. President, I should like to speak briefly on the substitution of the word "General Assembly" in lieu of "the state". I realize

"General Assembly" has been used throughout this document, and this may be the only place in the Constitution where the word "state" is used, but I think in this instance we should vary what has been the accepted practice.

This right should be imposed on all people, not only its legislative representatives. "State" involves not only the legislative branch, but the executive branch and the local representatives on the local level. For this reason, it seems to me that the state should bear this responsibility and not the General Assembly. I think we should mandate all of the responsible officials in the State of Maryland and not alone the General Assembly to carry out this very essential provision.

It seems to me that this matter was debated at considerable length and perhaps no further debate, and perhaps I should not be making these comments, but I do urge that we restore the original language which was arrived at after due consideration by a very strong minority in a very fine minority report adopted by this Convention.

I think in view of the colloquies this

morning, there are some substantial potential changes in substance in relation to the financing of the state school system which I do not think was intended by the Committee on Style or indeed by the Substantive Committee.

I feel quite strongly that the state gives a dignity, significance, and importance to this large responsibility which the General Assembly does not get. I would, therefore, urge that we not concur in the amendments of the Committee on Style.

THE PRESIDENT: Delegate Adkins, so that the matter may be clear in view of the way that the Chair is presenting the various amendments, I would like to ask you this question. The next amendment to be presented by the Chair would be that which strikes from line 7 the word "provide" and in line 8 the words "by law for" and substitutes the word "establish".

There are those who are going to urge that the words stricken be restored. Would you intend by your advocacy that the word "state" be retained, that you would or would not retain the words in the next line "by law"?

DELEGATE ADKINS: I should advocate that the

word "state" appear in this proposal wherever the words "General Assembly" have been substituted for it.

Frankly, my own preference, and this is one I find difficulty expressing, my own preference would be simply to restore this section to its original language, but I can't speak to that because the Chair is not putting the question in that fashion.

THE PRESIDENT: The Chair is asking the question so that you could address yourself to that.

In other words, your preference is that the language read "The state shall provide by law". This is what I want to find out.

DELEGATE ADKINS: Yes, sir, I would prefer that. Indeed, I would prefer to simply see the language restored to the way in which it was adopted by the Committee of the Whole. I think the language is meaningful. It has not only historic tradition, but it also has the legislative history of this Convention to support it. I do not think that there is the slightest room for equivocation or doubt as to what that language meant. I think there is substantial room as to what this language

means and, therefore, I would address my remarks to the point of saying that I would hope the Convention would restore the language as it came out of the final debates of the Committee of the Whole.

THE PRESIDENT: Delegate Boyer.

DELEGATE BOYER: Mr. President, I reluctantly have to oppose my good friend. I believe it is the first time I ever have, and I hope it will be the last.

But I would suggest that the words "General Assembly" have been taken in toto directly from Article 8, Section 1, of the present Constitution, and there is a good reason for this. We considered the word "state" in our Committee, and there was some thought that perhaps on reflection that the word "state" is a very ambiguous term. What is it? I don't think that Delegate Adkins meant to imply that the Governor should establish or provide. I don't think that he meant to imply that the court should establish or provide. I don't think he meant to imply that the local subdivisions should establish or provide.

I think that the word "state" encompasses all

these various individuals and offices and even goes far beyond that. The state is everyone, every citizen who has not been defranchised, every citizen of the state, and to open this situation to allow every citizen to establish and provide, naturally he would create chaos and for that reason we, after careful consideration, suggest that the words "General Assembly" be substituted for the word "state".

THE PRESIDENT: Any further discussion?

Delegate Della.

DELEGATE DELLA: Mr. Chairman, would the Chairman yield for a question?

THE PRESIDENT: Delegate Boyer, would you yield?

DELEGATE BOYER: Gladly.

THE PRESIDENT: Delegate Della.

DELEGATE DELLA: By the use of the words "General Assembly", are you alluding to the fact that they are in position to raise the budget for the money to provide for these things?

THE PRESIDENT: Delegate Boyer.

DELEGATE BOYER: It would remain, Delegate Della, exactly as it is now. The General Assembly, of course, under the executive-type budget that we had, would provide this in its budget. The General Assembly would scrutinize it and approve it.

THE PRESIDENT: Delegate Della.

DELEGATE DELLA: The language itself states the General Assembly by law shall establish. Doesn't that mean that they are in a position to raise the money even though they are prohibited from increasing the appropriations submitted by the Governor?

THE PRESIDENT: Delegate Boyer.

DELEGATE BOYER: I don't think that it means that. This is exactly the same language that we have now, and with your wide experience in legislative affairs, you probably know better than most of the delegates just how it is done. It is certainly not intended that the General Assembly shall do other than it is properly doing now.

THE PRESIDENT: Delegate Della? Any further discussion?

Are you ready for the question?

The question arises on the adoption of the amendment proposed by the Committee on Style in line 7 on page 1 of Committee Recommendation GP-6 to substitute the words "General Assembly by law" for the word "state".

A vote Aye is a vote in favor of the amendment. That is, in favor of the substitution. A vote No is a vote against.

Cast your votes.

Has every delegate voted?

Does any delegate desire to change his vote?

The Clerk will record the vote.

There being seventy-one votes in the affirmative and thirty-five in the negative, the amendment in line 7 to substitute the words "General Assembly by law" for the word "state" is adopted.

The question now arises on the recommendation of the Committee on Style to amend Section 8.01 by striking the word "provide" in line 7 and the words "by law for" in line 8 and substituting the word "establish". Is

there any discussion?

Delegate Boyer.

DELEGATE BOYER: Mr. President, with due respect to the Style Committee, from here on out, it would be our contention to substantially revert to the language that we had originally from the General Provisions Committee accepted and adopted and I believe which had been adopted by this Convention sitting as a Committee of the Whole.

We would prefer to keep the words "shall provide by law for" and delete the word "established".

THE PRESIDENT: Any further discussion?

Delegate Marion.

DELEGATE MARION: Mr. President, the way you cast the preceding amendment and this one, would you not, if this amendment is adopted, have the words "by law" twice in the section?

THE PRESIDENT: You would.

Delegate Boyer.

DELEGATE BOYER: You are exactly right. We only mean "by law" once.

THE PRESIDENT: Perhaps the Chair better subdivide further. The question will arise on the adoption of the Committee's recommendation that Section 8.01 be amended by striking from line 7 the word "provide" and on line -- The Chair will put the question this way.

The question arises on the recommendation of the Committee on Style to amend Section 8.01 by striking from line 7 the word "provide" and from line 8 the word "for" and to substitute for the word "provide" the word "establish". The Chair will submit separately the question of the amendment with respect to the words "by law".

Is there any discussion?

Are you ready for the question?

Delegate Pullen.

DELEGATE PULLEN: I don't understand what you are saying.

THE PRESIDENT: Well, I will state the question.

DELEGATE PULLEN: Please.

THE PRESIDENT: The question now presented to

you is whether or not to adopt the recommendation of the Committee on Style to strike from line 7 the word "provide" and to strike from line 8 the word "for" and insert in lieu of the word "provide" the word "establish".

A vote Aye would be a vote in favor of that change as recommended by the Committee on Style. A vote No would be a vote against that change which is what Delegate Boyer, as Chairman of the Committee, recommends would restore the language to the previous form.

DELEGATE PULLEN: In other words, you are taking two steps.

THE PRESIDENT: That is correct.

DELEGATE PULLEN: You eliminate "establish" and then we come in if that fails and take Chairman Boyer's recommendation?

THE PRESIDENT: No, we will take that in one step. In the second step we consider the words "by law" in line 8. A vote Aye would be a vote in favor of the Committee on Style's recommendation and a vote No would be a vote in favor of Delegate Boyer's recommendation.

Are you ready for the question?

(Cries of "question")

THE PRESIDENT: The question arises on the adoption of the recommendation to the Committee on Style to amend Section 8.01, to strike the word "provide" in line 7 and the word "for" in line 8 and substitute the word "establish" for the word. A vote Aye is a vote in favor of the recommendation of the Committee on Style. A vote No is a vote against the amendment in favor of the recommendation made by the Chairman of the Committee on General Provisions.

Cast your votes.

Has every delegate voted?

Does any delegate desire to change his vote?

The Clerk will record the vote.

There being five votes in the affirmative and one hundred and four in the negative, the motion fails and the amendment is rejected.

The question now arises on the adoption of the recommendation of the Committee on Style to strike from line 8 the words "by law". Is there any discussion?

Are you ready for the question?

The question arises on the adoption of the recommendation of the Committee on Style to amend Section 8.01 by striking the words "by law" from line 8.

A vote Aye is a vote in favor of the Committee's recommendation. A vote No is a vote against. A vote Aye, in other words, strikes the words "by law"; a vote No leaves the words "by law" in.

Cast your votes.

Has every delegate voted?

Does any delegate desire to change his vote?

The Clerk will record the vote.

There being ninety-two votes in the affirmative and twelve in the negative, the motion is carried and the amendment to strike the words "by law" in line 8 is adopted.

The Chair understands that there is no difficulty with the amendment in the next sentence, and he will put that, therefore, as one motion.

The question arises on the adoption of the recommendations of the Committee on Style as indicated in the second sentence of Section 8.01 beginning on

line 9 comprising all of line 10 and the words "by the Governor" in line 11.

Delegate Boyer, do you desire to be recognized?

DELEGATE BOYER: Just to comment that we urge the acceptance of this recommendation.

THE PRESIDENT: Very well.

A vote Aye is a vote in favor of the Committee's recommendation. A vote No is a vote against.

Cast your votes.

Has every delegate voted?

Does any delegate desire to change his vote?

The Clerk will record the vote.

There being one hundred and four votes in the affirmative and four in the negative, the motion is carried and the amendment is adopted.

The question now arises on the adoption of the amendment recommended by the Committee on Style to strike from line 11 the word "state" and to substitute therefor the words "General Assembly by law". Is there any discussion?

Are you ready for the question?

Delegate Della.

DELEGATE DELLA: Mr. President, don't we have to substitute the word "state" for "General Assembly" like we did in line 7?

THE PRESIDENT: We did not substitute the word in line 7, Delegate Della. The Convention accepted the words "General Assembly by law" instead of the word "state". To be consistent, you will do the same thing in line 11 and 12.

A vote Aye is a vote in favor of the amendment recommended by the Committee on Style; a vote No is a vote against.

Cast your vote.

Has every delegate voted?

Does any delegate desire to change his vote?

The Clerk will record the vote.

There being one hundred and six votes in the affirmative and five in the negative, the motion is carried and the amendment is adopted.

The question now arises on the adoption of the recommendation of the Committee on Style to amend

Section 8.01 by striking the word "provide" and the words "for such" in line 12 and substituting the word "establish" in line 12 and the word "any" in line 13.

The Chair recognizes Delegate Boyer.

DELEGATE BOYER: Mr. President, for consistency and with the comments already expressed, we would suggest that this particular style amendment be rejected and referred back to the GP Committee.

THE PRESIDENT: Any further discussion?

The question arises on the adoption of the recommendation of the Committee on Style to strike from line 12 the word "provide" and the words "for such" and to substitute in line 12 "establish" and in 13 "any".

A vote Aye is a vote in favor; a vote No is a vote against.

Cast your votes.

Has every delegate voted?

Does any delegate desire to change his vote?

The Clerk will record the vote.

There being two votes in the affirmative and

one hundred and five in the negative, the motion is lost and the amendment is rejected.

The question now arises on the acceptance of the Committee's recommendation to amend 8.01 by striking the words "by law" from line 12.

Is there any discussion?

Are you ready for the question?

The question arises on the adoption of the Committee's recommendation with respect to Section 8.01.

A vote Aye is a vote in favor of the amendment; a vote No is a vote against.

Cast your votes.

Has every delegate voted?

Does any delegate desire to change his vote?

The Clerk will record the vote.

Delegate Marion.

DELEGATE MARION: That went a little too quick, Mr. President. Can you tell me what we are voting on at this time?

THE PRESIDENT: The Committee's recommendation to strike the words "by law" in line 12.

Delegate Marion.

DELEGATE MARION: Would that leave it in line 11 and 12?

THE PRESIDENT: It has already been added in lines 11 and 12. Any other delegate desire to change his vote?

The Clerk will record the vote.

There being one hundred and six votes in the affirmative and one in the negative, the motion is carried, and the amendment is adopted.

Delegate Boyer, does the Chair understand that there is no objection to the remaining amendments in Report of the Committee on Style?

DELEGATE BOYER: The Chair understands.

THE PRESIDENT: The question arises that in line 14 the word "as" be stricken and the word "that" be substituted and in line 16 the word "the" be stricken and "this" be substituted. Any question?

The question arises on the adoption of the Committee's recommendation. A vote Aye is a vote in favor of the amendment: a vote No is a vote against.

Cast your votes.

Has every delegate voted?

Does any delegate desire to change his vote?

The Clerk will record the vote.

There being ninety-eight votes in the affirmative and three in the negative, the motion is carried, and the amendment is adopted.

Is there any desire to submit separately any of the amendments proposed by the Committee on Style?

The Chair hears none.

The question will arise on the adoption of the recommendations of the Committee on Style to amend Section 8.02 as indicated in lines 20, 21, and 22, on page 1 and lines 2, 3, and 4, on page 2.

Delegate Case.

DELEGATE CASE: Mr. President, would Chairman Penniman explain Section 8.02? He said that his Committee was recommending an additional amendment in line 18. That would be to add the word "public" before the word "higher" and I am wondering whether or not it is necessary to bring it up.

THE PRESIDENT: In the caption?

DELEGATE CASE: Yes.

THE PRESIDENT: Delegate Penniman.

DELEGATE PENNIMAN: This had been discussed on the floor a few days ago. I think it was Delegate Maurer who had said that the intention had been public higher education. It was my understanding that the people here had agreed to that substitution, but I referred to it this morning when I made the presentation knowing that it was an addition to the words which --

THE PRESIDENT: You desire to modify it?

DELEGATE PENNIMAN: Yes.

THE PRESIDENT: The Committee on Style desires to modify the Committee Recommendation GP-6 with the amendments by inserting in line 18 before the word "higher" the word "public". Is there any objection?

Delegate Gallagher.

DELEGATE GALLAGHER: Mr. President, if we say that the General Assembly shall provide any other higher public educational institution --

THE PRESIDENT: This is just in the caption

of the section. Line 18, the caption of the section is now "higher education". The suggestion is that it be "public higher education". Is there any objection?

The Chair hears none.

The Report of the Committee on Style is accordingly modified to insert the word "public" before the word "higher" in Section 8.02, line 18.

The question now arises on the adoption of the amendments recommended by the Committee on Style to Section 8.02 in lines 20, 21, and 22 on page 1 and lines 2, 3, and 4 on page 2.

Delegate Lord.

DELEGATE LORD: Mr. President, I think it would be more appropriate if you restricted that to lines 1, 2, and 3 on page 2 because in line with the amendment that will come in lines 7 and 8, there is one word that has to be added on line 4. It is part and parcel of the amendment which is going to be offered upon lines 7 and 8.

THE PRESIDENT: Does it change any of the language?

DELEGATE LORD: Yes, the word "such" which has been stricken out by the Committee on Style, we would suggest that it should be reinserted.

THE PRESIDENT: Very well. The Chair will divide the question as indicated.

The question arises on the adoption of the Committee's amendments to Section 8.02 contained in lines 20, 21, and 22 on page 1 and lines 2 and 3 on page 2.

A vote Aye is a vote in favor of the adoption of the amendments recommended by the Committee. A vote No is a vote against.

Cast your votes.

Has every delegate voted?

Does any delegate desire to change his vote?

There being ninety-six votes in the affirmative and four in the negative, the motion is carried, and the amendments are adopted.

The question now arises on the adoption of the amendment recommended by the Committee on Style to Section 8.02 from line 4 on page 2.

Before putting the question, Delegate Lord, is it desired to accept part of the amendment in that line and reject part?

DELEGATE LORD: That is correct.

THE PRESIDENT: Rejecting the striking of the word "such"?

DELEGATE LORD: We have no objection to the insertion of the words "by the General Assembly by law", but do object to the striking of the word "such".

THE PRESIDENT: Very well. The question arises to amend Section 8.02 by inserting in line 4 on page 4 the words "by the General Assembly by law".

A vote Aye is a vote in favor of the amendment; a vote No is a vote against.

Delegate Case.

DELEGATE CASE: It might be more meaningful to some of us what words Delegate Lord and his compatriots have come up with in substitution of the latter part of the sentence, and I suggest that only because he objects to striking the word "such", and I assume that has something to do with what is to come later.

THE PRESIDENT: Delegate Lord.

DELEGATE LORD: Certainly, the last line would merely be restored. All the other style changes in line 7 we would agree to. I will read it through --

THE PRESIDENT: What is the position with respect to the word "such" in line 4?

DELEGATE LORD: We think it should be restored to make the sentence read more properly.

THE PRESIDENT: Very well.

The Committee proposes to recommend that the amendment to strike the word "such" in line 4 and all of the last line not be concurred in and the remaining amendments be concurred in. Does that answer your question, Delegate Case?

DELEGATE CASE: Would that mean, Delegate Lord, that the word "their" in line 7 would stay in?

THE PRESIDENT: Delegate Lord.

DELEGATE LORD: That would be our recommendation.

THE PRESIDENT: Very well. The question arises on the adoption of the recommendation of the Committee on Style to amend Section 8.02 by adding in line 4 on page 2 the words "by the General Assembly by law".

A vote Aye is a vote in favor of the amendment; a vote No is a vote against.

Cast your votes.

Has every delegate voted? Does any delegate desire to change his vote?

The Clerk will record the vote.

There being one hundred votes in the affirmative and one in the negative, the motion is carried and the amendment is adopted.

The question now arises on the adoption of the amendment recommended by the Committee on Style to delete the word "such" from line 4 on page 2 of Section 8.02.

A vote in favor of the recommendation of the Committee on Style would delete the word "such"; a vote against the recommendation of the Committee on Style and it would restore the word "such".

Cast your vote.

Has every delegate voted? Does any delegate desire to change his vote?

The Clerk will record the vote.

There being eleven votes in the affirmative and eighty in the negative, the motion is lost and the amendment is rejected.

The question now arises on the adoption of the amendment by the Committee on Style to Section 8.02 to insert the word "over" as the first word on line 7 on page 2, to delete the word "the" in the same line and substitute the word "their" and to delete the word "thereof" in the same line.

Is there any discussion?

Are you ready for the question?

Delegate Case.

DELEGATE CASE: So that the sentence would read, "over the expenditure of their funds thereof"?

THE PRESIDENT: No, "thereof" would be out.

DELEGATE CASE: Very well.

THE PRESIDENT: Are you ready for the question? The question arises on the adoption of the amendment proposed by the Committee on Style to insert as the first word in

line 7 the word "over", to delete from the same line the word "the", and substitute the word "their", and to delete from the same line the word "thereof".

A vote Ay e is a vote in favor of the amendment; a vote No is a vote against.

Cast your vote.

Has every delegate voted? Does any delegate desire to change his vote?

The Clerk will record the vote.

There being ninety-eight votes in the affirmative and two in the negative, the motion is carried and the amendment is adopted.

The question arises on the adoption of the recommendation of the Committee on Style to amendment Section 8.02 by striking all of line 8 on page 2.

Is there any discussion?

Are you ready for the question? The question arises on the adoption of the amendment recommended by the Committee on Style to delete all of line 8 on page 2.

A vote Aye is a vote in favor of the recommendation of the Committee, and would delete the line; a vote

No is a vote against and would restore the line.

Cast your votes.

Have all delegates voted? Does any delegate desire to change his vote?

The Clerk will record the vote.

There being twenty-one votes in the affirmative and seventy-eight in the negative, the motion is lost and the amendment is rejected.

Are there any further amendments to Section 8.01 or Section 8.02?

Delegate Sybert.

DELEGATE SYBERT: Mr. Chairman, doesn't that leave the anomolous result of having the word "such" in line 4 that we now don't need in view of the rejection of the last amendment.

THE PRESIDENT: I don't think so. The section as now amended would read as follows: This is the sentence beginning in line 3: "These boards may be granted by the General Assembly by law such additional powers of supervision, direction, and control of their respective institutions and over the expenditure of their funds as the

General Assembly may deem to be appropriate."

Delegate Sybert.

DELEGATE SYBERT: I am sorry.

THE PRESIDENT: The motion to amend was rejected on the last vote which meant that the deletion was rejected and the line remained as it was originally.

Are there any further amendments to Section 8.01 and 8.02?

The Chair hears none.

The question now arises on the adoption on second reading of Committee Recommendation GP-6 as amended. The Clerk will ring the quorum bell.

The question arises on the adoption of Committee Recommendation GP-6 as amended on second reading. A vote Aye is a vote in favor of the adoption of the Committee recommendation as amended; a vote No is a vote against.

Cast your vote.

Has every delegate voted? Does any delegate desire to change his vote?

The Clerk will record the vote.

There being 107 votes in the affirmative and one

in the negative, the motion is carried and Committee Recommendation GP-6 as amended is adopted on second reading. The recommendation as amended is referred to the Committee on Style, Drafting and Arrangement.

This concludes consideration of the special orders. We revert now to the next item on the calendar for second reading of Committee recommendations.

The first item for second reading is the Committee Record S&D-17. This is with respect to Committee Recommendation GP-7 dealing with amendments, GP-8 dealing with Constitutional Convention, GP-9 dealing with the carryover of common law, GP-12 effective date, R&P-1 suspension and emergencies. This is the Committee record that was under discussion at about 2 o'clock when we took up consideration of the special orders.

We had concluded consideration of Amendment 6 to Section 10.02. We had passed over for the moment further consideration of Amendment 5 to Section 10.01. The Chair would therefore revert to Amendment 5, Section 10.01.

I believe this is the amendment made necessary to bring this section into conformity with the schedule of

transitional provisions, was it not?

DELEGATE PENNIMAN: Yes. This was our intention at the present.

THE PRESIDENT: Any reason why we can't act now?

DELEGATE PENNIMAN: No.

THE PRESIDENT: Very well.

Is there any further discussion necessary with respect to Amendment No. 5?

Delegate Case.

DELEGATE CASE: Mr. President, I raised the initition question about this because it seemed to me that as a matter of strict theory law were not enacted pursuant to authority granted since the prior Constitution or any Constitution does not grant the authority to enact laws but rather acts as a restriction on the plenary power of the Legislature to grant laws.

THE PRESIDENT: I think the Chair can perhaps clarify it a little bit because the discussion arose in considering the provisions to be included in the schedule of transitional provisions.

Your comment is, of course, entirely correct

except that unfortunately in a number of instances in the previous Constitution the language is so phrased that it would appear to be a grant of power.

It, for instance, says the Assembly may or shall prescribe by law thus and so. Because of this, because persons concerned with the effect of the Section 10.01, not delegates. I think there were some delegates, but these were some members of bar association committees or others were a little apprehensive less there be any possibility of contention being made that if the old Constitution died and it granted the authority to pass a law that that grant of authority died with it and carried with it the law enacted pursuant thereto.

The Chair does not share that view, but I did not think it was harmful to include the provision to prevent any doubt.

Delegate Case.

DELEGATE CASE: Mr. President, you expressed quite clearly the point I was seeking to make and the only other query I have of that section is should the saving clause be limited to the Constitution of 1867 when it says

a prior Constitution and that is the way that is defined, or should it go on back and save all the laws if any and I wonder if it should say "granted by the provisions of prior Constitution"?

THE PRESIDENT: You have raised the question that somebody else anticipated you on, but if the prior Constitutions died when the subsequent Constitution is adopted, then whatever effect resulted from that death has already occurred and it was felt not necessary to provide it.

Are you ready for the question?

Delegate Grant.

DELEGATE GRANT: Mr. President, this brings up the same problem which I brought up in a prior amendment which was rejected.

However, I am not sure whether it is completely understood. Assuming, as you assume that it is not necessary, then conversely if it is put in, wouldn't it then by implication exclude anything else which might have been based on a prior Constitution which would in effect mean if there are any of these other clauses which are included

in 10.01 which are based on a prior Constitution they would in effect then not be continued.

THE PRESIDENT: I don't follow you because the whole effect of this sentence is to provide exactly to the contrary of what you suggest.

Delegate Grant.

DELEGATE GRANT: My understanding of Amendment No. 5 is that it is a saving clause in the event that a statute is qualified from a prior constitutional provision; is that correct?

THE PRESIDENT: Yes.

DELEGATE GRANT: Is it my understanding that it is your opinion that it is not necessary because Section 10.01 already does that?

THE PRESIDENT: Essentially that. I would rely on the general principle that if a law is valid when it is enacted, it will remain valid.

DELEGATE GRANT: A lot of actions may be made on what is contained in the Bill of Rights and so forth and that would be bottomed on the prior Constitution. My concern is having agreed with the Chair as to having been

valid, they should remain valid.

Do you mean by implication there would be no other exception?

THE PRESIDENT: I do not share your concern. I don't know how else to say it.

Delegate Henderson.

DELEGATE HENDERSON: Mr. Chairman, I was just wondering by the addition of the word pursuant to authority recognized or granted by the provision might not cover it.

THE PRESIDENT: I don't believe that was Delegate Grant's point. I think his point was acts other than legislation, a court decree which might be bottomed on some provision of the Constitution.

Delegate Henderson.

DELEGATE HENDERSON: What I was thinking of particularly is the statute of fraud which goes back to the statutes of the first Elizabeth and it is still a law of Maryland. You could hardly say that was granted under the Constitution. There was a clause in there which preserved the British statutes.

THE PRESIDENT: It was the feeling of the Committee

that things such as the statute of fraud were clearly protected by the first part of the sentence beginning in line 8. That was the purpose of it.

Delegate Hardwicke.

DELEGATE HARDWICKE: If I may elaborate on that, the Committee expressly used "law" rather than laws in order to pick up not only legislation but common law hangovers such as the statute of fraud.

THE PRESIDENT: The question arises on the adoption of Amendment 5. A vote Aye is a vote in favor of the amendment; a vote No is a vote against.

Cast your vote.

Has every delegate voted?

Does any delegate desire to change his vote?

The Clerk will record the vote.

There being seventy-eight votes in the affirmative and thirteen in the negative, the motion is carried and the amendment is adopted.

Are there any other amendments to Section 10.01 or 10.02?

The Chair has none and hears none.

Are there any further amendments to Section 10.03?

Delegate Della or Delegate Johnson, I take it, you have two amendments going in part to the same question? I take it you would prefer to submit your Amendment J first and failing that to submit Amendment I. State your preference.

DELEGATE JOHNSON: I would prefer to submit Amendment I to the delegates and if that is adopted it would not be necessary to submit Amendment J.

THE PRESIDENT: Very well.

Pages will please distribute Amendment I, I for Item.

This will be Amendment 7.

Will the Clerk read the amendment?

MR. QUILLEN: Amendment No. 7 to Committee Recommendation Nos. GP-7, GP-8, GP-9, GP-12, R&P-1, and LB-3 as amended by Report No. S&D-17 by Delegates Johnson, Della, Dorsey, Dukes, Hostetter, Jett, Kahl, Rush, Siewierski, Soul Bybczynski, Stern, Sybert, H. Taylor, and Weidemeyer:

On page 2 Section 10.03 Constitutional Convention

in line 18 strike out the words "by law" and in the same line after the word "may" insert the following:

", by the affirmative vote of three-fifths of all the members of each house,".

THE PRESIDENT: The amendment is submitted by Delegate Johnson and seconded by co-sponsors.

The Chair recognizes Delegate Johnson.

DELEGATE JOHNSON: Mr. President and Ladies and Gentlemen of the Convention, the only purpose for this amendment is to require a three-fifths affirmative vote by the General Assembly prior to calling a constitutional convention on its own accord. The only reason that the words "by law" were deleted was because of the fact that the drafting department felt that it was unnecessary inasmuch as that was the only way that the General Assembly may act.

However, Style decided to insert those words and if it is consistent with their other actions it is of no consequence.

I ask that the delegates place before them Section 10.03 of page 2 of the Style and Drafting report before us because it is my opinion that we had not

discussed this matter in detail before. You will note that 10.03 now reads that the General Assembly alone consequently only by majority action may call a Constitutional Convention without the requirement of putting it on referendum and without the requirement that the people of the State act upon it.

We feel that this is an unfortunate provision. I direct your attention to Section 10.02, on page 1, the preceeding section which you will note requires a three-fifths affirmative vote of the General Assembly in order to adopt an amendment to the Constitution.

This same section also provides that only an affirmative vote of a majority of all the members of the Constitutional Convention is required in order to write either a new section or an entirely new Constitution.

We submit that it would be a mistake to permit the General Assembly on a majority vote only to call a Constitutional Convention and together with that have the Constitutional Convention on a majority vote only write an entirely new Constitution.

I asked the research department to look into this

matter for us and their research has indicated that fifteen States while permitting their legislature to call a constitutional convention require that it be placed on referendum.

Now, of the fifteen States we have such States as Michigan, Missouri, New Hampshire, New York, etc.

In addition to that, there are twenty-one States that require not only a two-third vote of the legislature prior to having a constitutional convention, but in addition to that, referendum too, referendum also, and those States include California, Florida, Maine, North Carolina, Oregon, etc.

So that thirty-six States and the United States require something more than a majority of the general assembly acting alone to call a constitutional convention.

We feel that this amendment, the amendment that is before you, is a minimum type amendment and we urge that this Convention require that if the Legislature or the General Assembly, I should say, is going to have the authority to call a constitutional convention that it be required to do so by three-fifths action.

Now, on the basis of the recommended house and senate, the 160-member General Assembly, you will note that in the house a majority is only sixty-one and the three-fifths vote that we recommend, although not a great deal higher is a minimum, we believe that will require seventy-two votes.

THE PRESIDENT: You have one half minute.

DELEGATE JOHNSON: In the proposed senate a majority would be twenty-one. Three-fifths would be twenty-four and we submit that this is a minimum so this amendment would require the affirmative vote of both houses of ninety-six votes rather than under the original language eighty-two.

If this particular amendment is adopted, it will not, in my opinion, be necessary to call forth Amendment J which would ordinarily require a referendum on each constitutional convention. We sincerely hope that this particular amendment will be adopted.

THE PRESIDENT: Delegate Boyer.

DELEGATE BOYER: Mr. President and Fellow Delegates, I think that Delegate Johnson has very adequately

and fairly presented this question. It is a very clearcut issue. If you believe that the Constitutional Convention should be accomplished by a vote of twenty-one senators instead of twenty-four, then you would vote against this amendment.

If you believe on the other hand something as important as calling a constitutional convention should be accomplished by a three-fifths vote then you would vote against it.

Same thing in the house. If you believe a three-fifths vote instead of a bare majority, you would vote for it.

I leave it to your judgment.

THE PRESIDENT: Any other delegate desire to speak in favor of the amendment?

Delegate Case, do you desire to speak in favor?

DELEGATE CASE: I would like to ask Delegate Johnson a question.

THE PRESIDENT: You will have to wait until he has the floor.

Delegate Mentzer.

DELEGATE MENTZER: I also wanted to ask a question.

THE PRESIDENT: Any delegate desire to speak in favor?

Any delegate desire to speak in opposition?

Delegate Gallagher.

DELEGATE GALLAGHER: Mr. President and Ladies and Gentlemen of this House, I spent too many frustrated years in this General Assembly trying to get even a majority vote out of the House and Senate to have a constitutional convention called and I assure you the probabilities of calling a constitutional convention even when you need only a majority vote are not very great because of a number of built-in difficulties when you are dealing with the General Assembly itself which is not anxious to risk its security to a constitutional convention.

I can't think of a better way of stultifying the opportunity for a constitutional convention, no matter how badly it is needed by this requirement that there be a three-fifths vote and if you had been in this General Assembly in the early 1960's and had seen the time and

effort that went into attempting to get a constitutional convention to do something about reapportionment you would have a far different view about some of the people who are dissatisfied with the work of this Convention.

Now, you will also feel perhaps that had they had this Constitutional Convention that the rigors of reapportionment would not have been as heavy upon them as the Courts have proved to demonstrate.

I simply say on the basis of experience that this is an opportunity to bottle up the popular will, that this is an attempt, it seems to me, to keep the status quo as long as possible, and I would urge you to defeat the amendment.

THE PRESIDENT: Any other delegate desire to speak in favor?

Delegate Johnson, would you take the floor to yield to a question? This will be your second and last opportunity to take the floor.

DELEGATE JOHNSON: I will be glad to yield to any question. I would like to have a moment to close.

THE PRESIDENT: You have a total of three minutes

including time for question. If you want to say anything, perhaps you better say it before you yield. It is up to you.

DELEGATE JOHNSON: If Delegate Case will give me just a moment. I want to point out in answer to Delegate Gallagher's argument that this particular provision, this particular amendment, in no way changes the fact that the legislature at any time may by majority vote call a constitutional convention. It may do so, but the only proviso is that that question by majority vote must be before the people on a referendum. We also have a proviso in Section 4.03 if no action is taken within twenty years, then, of course, a constitutional convention will be called and put on the ballot.

We are writing a constitution that we hope will last for some period of time. A constitution should require something more than a majority vote of the General Assembly to change it. I think this is simply good constitutional writing.

I don't like the idea that there may be a constitutional convention, whether it is necessary or not, two

or three or five years from now, and I submit that the vast majority of all the other states in this country are providing something more than a majority vote of their General Assembly. I would like to see our constitution contain a similar provision.

THE PRESIDENT: Do you yield to a question by Delegate Case?

DELEGATE JOHNSON: Yes, sir.

THE PRESIDENT: Delegate Case.

DELEGATE CASE: Delegate Johnson, your amendment strikes out the words "by law". I was under the impression the way Section 1.03 stands the law which, of course, would be passed in the usual way would be subject to the Governor's approval or veto. It would be returned to the General Assembly and thereafter subject to the various provisions of the Constitution dealing with vetoed bills.

You have struck out the words "by law", and you inserted "by the affirmative vote of three-fifths of all the Members of each House". It seems to me you are changing much more than you indicated you seek to

change.

DELEGATE JOHNSON: The answer is no. The only reasons that the words "by law" were deleted was because the drafting department of this Constitutional Convention indicated to me that they didn't think the words were absolutely necessary since in their opinion that was the only way that the General Assembly could act on this matter.

I made it clear that we intend it to be by law and subject to gubernatorial veto. The words can remain. The drafting department drafted it in that fashion, and if it will be clearer, then let us take the amendment with the words "by law" in it.

THE PRESIDENT: Delegate Case.

DELEGATE CASE: I think it would be helpful if you would indicate that the amendment would be further amended. Of course, the General Assembly could cause things to be done and could certainly cause the calling of a convention. As I said earlier, the action would not be subject to gubernatorial veto.

THE PRESIDENT: Do you desire to make such a

modification, Delegate Johnson?

DELEGATE JOHNSON: Yes, I do. I would like to indicate that the words "by law" do not appear in Section 10.02. I honestly don't believe that the General Assembly can act in any other way in this particular area other than by law, but if it will clear up any misunderstanding, let us change the amendment so that the words "by law" are not deleted, and let Style and Drafting, when they take it up, decide whether the words should remain and whether or not that is consistent or inconsistent with Section 10.02.

THE PRESIDENT: The Chair has suggested in order to accomplish that you might modify your amendment. On line 2 strike out the words "strike out" and insert the word "after" and in line 3 strike out the words "and in the same line" after the word and in line 4 strike out "may" and in line 6 after the comma insert the word "enacted". If this were done, the section as modified would read "The General Assembly by law enacted by the affirmative vote of three-fifths of all the Members of each House" and so forth.

Is that what you desire?

DELEGATE JOHNSON: I so move.

THE PRESIDENT: Any objection?

If not, the amendment is so modified.

Delegate Beatrice Miller.

DELEGATE BEATRICE MILLER: I would like to ask Delegate Johnson a question, if I may.

THE PRESIDENT: He has used all his time and spoken twice. Is there any objection to Delegate Johnson taking the floor the third time?

The Chair hears none. Delegate Johnson, do you take the floor to yield to a question?

DELEGATE JOHNSON: Yes, sir.

THE PRESIDENT: Delegate Miller.

DELEGATE BEATRICE MILLER: Do I understand you think the General Assembly can submit this question and they can do this by that majority vote?

DELEGATE JOHNSON: Yes, that was my understanding.

THE PRESIDENT: Delegate Miller.

DELEGATE BEATRICE MILLER: Could there be either a clear understanding that this would be added by Style

and Drafting or you would add it to your amendment so that it would read "or by majority vote may submit the question"?

THE PRESIDENT: Delegate Johnson.

DELEGATE JOHNSON: Our amendment doesn't alter that particular portion of Section 10.03. It doesn't reach that part of 10.03 where it says "or may submit the question of calling a constitutional convention to the voters of the State at any time". It leaves that intact.

THE PRESIDENT: Delegate Johnson, I think Delegate Miller's point is if your amendment is adopted, gramatically though, you have not changed the second part of the sentence. The amended language would go to the second part and she is asking whether you would let Style make it clear that was not intended?

DELEGATE JOHNSON: Yes.

THE PRESIDENT: Any further discussion?

Are you ready for the question?

The Clerk will ring the quorum bell.

The question arises on the adoption of Amendment No. 7 as modified. A vote Aye is a vote in favor of the

amendment; a vote No is a vote against.

Cast your votes.

Has every delegate voted?

Delegate Boileau?

DELEGATE BOILEAU: No.

THE PRESIDENT: Delegate Boileau, are you as sad as you looked at that moment?

DELEGATE BOILEAU: Not quite, Mr. President.

THE PRESIDENT: Have all the delegates voted?

Does any other delegate desire to change the vote?

The Clerk will record the vote.

There being forty-eight votes in the affirmative and sixty-one in the negative, the motion is lost and the amendment is rejected.

Delegate Johnson, do you now desire to offer your Amendment J?

DELEGATE JOHNSON: This was the understanding of the sponsors of the amendment, and I feel it my duty and responsibility to call up Amendment J, yes, Mr. President.

THE PRESIDENT: Will the pages please distribute

Amendment J?

This will be Amendment No. 8.

THE PRESIDENT: This will be Amendment No. 8. The clerk will read the amendment.

MR. QUILLEN: Amendment No. 8 to Committee Recommendations Nos. GP-7, GP-8, GP-9, GP-12, R&P-1, and LB-3 as amended by Report No. S&D-17, by Delegates Johnson, Della, Dorsey, Dukes, Hostetter, Jett, Kahl, Rush, Rybczynski, Siewierski, Soul, Stern, Sybert, H. Taylor, and Weidemeyer:

On page 2, Section 10.03, Constitutional Convention, strike out all of lines 18 and 19 and insert in lieu thereof the words "The General Assembly may".

THE PRESIDENT: The amendment is submitted by Delegate Johnson and seconded by the co-sponsors. The Chair recognizes Delegate Johnson.

DELEGATE JOHNSON: Mr. President and ladies and gentlemen of the Convention:

The purpose of this amendment is to provide that prior to the calling of a Constitutional Convention by the legislature or that prior to a Constitutional Convention, the question must be put on referendum; so that we are deleting the first portion of section 10.03, so that it would read, in effect, the General Assembly may

submit the question of calling a Constitutional Convention to the voters of the State at any time. So it would require only majority action of the legislature to set up the machinery to do so, but the question would be put to all the citizens of the State as to whether or not they would like to have the Constitutional Convention.

Kindly bear in mind that regardless of this action, at least every 20 years the action will be placed on the referendum ballot.

May I reiterate that at least 36 States require action by more than a simple majority of the General Assembly. We sincerely believe it is a serious mistake in constitutional drafting to require the calling of a Constitutional Convention by majority action of the General Assembly alone, particularly when you consider that it takes three-fifths, and rightfully so, we believe, three-fifths action of the General Assembly just to make an amendment to the Constitution.

It is just inconsistent. You require, under section 10.02, for three-fifths action of the General Assembly in order to amend the Constitution, and then you

are saying by majority action then can call an entirely new Constitutional Convention.

I think it is time that Maryland came in the mainstream of the thinking of this country, and I urge that this amendment be adopted.

DELEGATE JAMES: Any further discussion? The Chair recognizes Delegate Gallagher.

DELEGATE GALLAGHER: Mr. President and ladies and gentlemen: May I point out the effect of this amendment is to remove from the General Assembly the power of on its own volition calling for a Constitutional Convention. The question of limiting the General Assembly to merely submitting the question to the voters is a very interesting one. Those students of history will remember when the 20 year question was put in 1950 to the voters of Maryland, the voters overwhelmingly, approximately 2.5 to 1, voted for the calling of a Constitutional Convention, but because the number of votes cast in the affirmative did not equal at least 50 percent of the total votes cast for governor, the General Assembly,in its wisdom at that time, decided that there would be no Constitutional

Convention called.

I submit to you that under the reapportioned General Assembly which has less to fear from a Constitutional Convention that it is one of the proper prerogatives of that body to call a Constitutional Convention if it desires to do so without the intervening time lag; if the time lag would take place, one could be involved with the question of submitting it to the voters.

I submit to you the original proposal is best, that you give the General Assembly the option of either calling the Constitutional Convention on its own volition; or if it has some doubts about it, submitting the question to the voters. I say to you in a Constitutional Convention where we are trying to strengthen the arm of the legislature, we should not be passing this kind of amendment which, in effect, takes from the General Assembly a very significant and important power.

I urge you to defeat the amendment.

DELEGATE JAMES: The Chair recognizes Delegate Weidemeyer.

DELEGATE WEIDEMEYER: I rise to support the

amendment, Mr.President.

As this section 10.03 is now drafted, the legislature, by a simple majority, may call a Constitutional Convention, or by a simple majority it may submit the question to the people. Then the amendment goes on to majority voting on the question.

I know that a lot of them who looked for a Constitutional Convention for quite a few years want to liberalize it, but to have a change in our basic fundamental organic law of the State every time the whim of a bare majority occurs is something upsetting and disturbing.

In a constitutional form of government in a republic such as we have, a constitution is your basic document, and once the people get used to it and it is workable, just for trivial reasons we do not want to have it upset and disturb our whole populace.

I think you are liberalizing it enough when you take away from the General Assembly the power to call it every time they want at the whim of a bare majority and upset our basic structure of this State. I think we better give a lot of thought to this amendment, because if you

work hard here and you think you prepared a good document, you don't want the next legislature to come in and by a bare majority call another Constitutional Convention, which you provide for in this document.

DELEGATE JAMES: The gentleman has a question.

DELEGATE WEIDEMEYER: If he wants to ask a question -- I only have a minute, and I wish to conclude my remarks.

This amendment is a very good amendment, and I hope for the sake of stability in government you will think long and hard on it, and will vote for this amendment.

What could happen? Supposing yesterday this same issue was up. We saw what happened right in these very halls where by a bare majority we adopted an amendment; by another we reconsidered it; and by another bare majority we put it in -- we had a tie vote.

The way this is written you are allowing the legislature to call a Constitutional Convention. Every time we have had a Constitutional Convention before, in our Constitution of 1851, in 1864, and 1867, the legislature

could take the sense of the people, but it had to have two-thirds vote, and then before a Constitution could be mandated by the people, there had to be a majority of the people voting at the election.

What can happen under this amendment? What can happen under this section 10.03 as you now have it? Three things can happen:

The legislature can call it. That brings in a new Convention to change the whole document you wrote.

Or the legislature may submit it to the people.

DELEGATE JAMES: Your time has expired.

DELEGATE WEIDEMEYER: Just a minute, Mr. President, if I might.

If at that election only one-tenth of the people voting at the election vote on that issue, if a bare majority votes on the issue, they can call a Constitutional Convention.

Rather than having stability and good government, you are adding instability.

DELEGATE JAMES: Sorry; we will close the curtain.

Delegate Winslow.

DELEGATE WINSLOW: Mr. President, may I call the attention of the delegates to a situation we seem to have forgotten?

As the section now reads, the General Assembly by law may call a Constitutional Convention.

It has already been pointed out when that language is used the governor has the veto power. It is not merely a majority of the two houses of the General Assembly.

In the second place, when the General Assembly acts by law under another provision of this Constitution, such an action I believe is subject to a referendum, so that if the people of the State do not want a Convention, even though the legislature may say so, they may by referendum procedure put that to a popular vote, and thus thwart the legislature in its efforts to get a Convention, if they so desire.

DELEGATE JAMES: Any further discussion.

Delegate Morgan.

DELEGATE MORGAN: Mr. President, I move the previous question.

(Whereupon the motion was seconded.)

DELEGATE JAMES: All in favor of the previous question, say Aye; opposed, No.

The Ayes seem to have it. The Ayes have it.

The members will record their vote on Amendment No. 8.

Ring the quorum bell, please.

Delegate Boileau.

DELEGATE BOILEAU: No.

DELEGATE JAMES: You are still without a button?

DELEGATE BOILEAU: Yes, I am, Mr. President.

DELEGATE JAMES: The clerk will record the vote.

There being 34 votes in the affirmative and 62 in the negative, the amendment fails for want of a majority. That is 63, including Delegate Boileau. There are 34 in the affirmative. The amendment fails for want of a majority.

Delegate Brumbacher -- Delegate Needle, do you care to offer your amendment B?

DELEGATE NEEDLE: Amendment B, for "beautiful". In the absence of Delegate Brumbacher, I will offer this amendment.

DELEGATE JAMES: This will be amendment 9.

Do you have copies?

The pages will distribute copies of Amendment B. The clerk will read Amendment B.

MR. QUILLEN: Amendment No. 9 to Committee Recommendations Nos. GP7-, GP-8, GP-9, GP-12, R&P-1, and LB-3 as amended by Report No. S&D-17, by Delegates Grumbacher, Needle, Hardwicke, and Sollins:

On page 2, Section 10.03, Constitutional Convention, in line 23 after the period add the following new sentence:

"If a petition, signed by a number of qualified voters of the State equal to ten per cent of the total number of votes cast for Governor in the most recent gubernatorial election, provided that not more than one-fourth of such number shall be voters in any one county, is filed with the office of Governor to refer to the voters the question of calling a constitutional convention, the question shall be submitted to a vote at the next general election."

DELEGATE JAMES: Delegate Needle.

DELEGATE NEEDLE: Mr. Chairman, I would like

to ask unanimous consent to make a style change in the amendment. The clause within the commas on lines 11 through 13, reading "is filed with the office of Governor to refer to the voters the question of calling a Constitutional Convention" should be inserted after the comma on line 5.

DELEGATE JAMES: Line what?

DELEGATE NEEDLE: Line 5 of the amendment.

DELEGATE JAMES: Wheredoes the comma go on line 5 then?

DELEGATE NEEDLE: The clause would be inserted after the comma which follows the word "petition". The clause would be within commas.

DELEGATE JAMES: The language you read would be transposed after the word "petition"?

DELEGATE NEEDLE: Yes.

DELEGATE JAMES: Does everyone understand that amendment?

Delegate Needle suggests as a matter of style that it should read "If a petition is filed with the office of Governor to refer to the voters the question of calling a constitutional convention" --, and then it

provides, "signed by a number of qualified voters", et cetera.

Is there any objection to the modification?

Delegate Sybert.

DELEGATE SYBERT: I have objection, because it seems to me it should come after the comma in line 9. Then it will make sense.

DELEGATE JAMES: Does Delegate Needle wish to consider the matter further?

DELEGATE NEEDLE: Mr. Chairman, if there is any dispute about it, I would be perfectly willing to leave it to the Style Committee. It is strictly a style suggestion. Any way it goes it does not change the meaning at all.

DELEGATE JAMES: You adhere to your original amendment?

DELEGATE NEEDLE: Leave it the way it was originally stated, and leave to the Style Committee to change, if they want to.

DELEGATE JAMES: Will you speak to the amendment?

DELEGATE NEEDLE: This would write into 10.03

the ability of the people by petition to call a constitutional convention. This amendment was offered to you on first reading and lost by a very slight margin. Since that time we have enacted certain provisions in the Constitution which may not be to the entire liking of all delegates, and perhaps now this amendment might be more acceptable.

It is now very important, I think, to support this amendment, that is, initiative procedure on calling a Constitutional Convention, in view of the action of this body yesterday when it defeated initiative procedure for amendment of the Constitution.

Some persons have expressed a concern that we in this Constitutional Convention have taken some measure of government from the people. I don't agree with that, but here is an opportunity for those so concerned to give a large slice of government back to the people.

A Constitutional Convention, the drafting of a Constitution is the most basic exercise of sovereign right of the people. They should have the ability, I feel, to call the Constitutional Convention, in addition

to the ability of the General Assembly to call that Constitutional Convention or place the question of calling a Convention on the ballot.

Remember that if the General Assembly does not do so, it will not be on the ballot but every 20 years. That is quite a period of time.

I feel that the people, the voters of this State, should have the ability within that period of time to place the question on the ballot. The mere filing of a petition does not call a Constitutional Convention. It only brings into action four steps: First, the filing of a petition which would require at least ten percent of those who voted in the most recent gubernatorial election, not more than one-fourth of any of them being from one county. The procedural requirements there are exactly twice as difficult as a referendum procedure, intentionally.

Secondly, it only places the question on the ballot, and the voters then at the next election would have the opportunity to indicate if they want the calling of a Constitutional Convention.

Thirdly, an outstanding deliberative body I

think such as ours would have an opportunity to determine whether or not there should be a revision of the Constitution, and if it decides to recommend to the people any such revisions, that proposal will have to be ratified by the voters, just as ours will have to be ratified by the voters on May 14.

Therefore, there are more than adequate safeguards built in to this procedure, and I submit that in order to give this measure of government to the people it is essential for us to support this amendment.

DELEGATE JAMES: The Chair recognizes Delegate Boyer.

DELEGATE BOYER: Mr. President, this is exactly the same type of initiative that we acted upon, heard arguments pro and con on yesterday, and substantially and roundly defeated.

May I give you in quick staccato style, seven good reasons why this also should be defeated?

First, there is already adopted a mandatory provision for calling the Convention every 20 years if desired by the people.

Secondly, there is a control of the legislature already by the electorate.

Third, there is a danger of initiative petition such as this being started and controlled by special interest groups.

Fourth, the shortened Constitution that we are evidently adopting here -- this is good; a streamlined Constitution -- leaves the details as such to the legislature, and therefore, I don't think the calling of the Constitution for change is absolutely necessary in initiative proceeding.

Fifth, it is well established that a properly proportioned legislature is to be trusted to reflect the demands of the people, and they have the right in our Constitution to call such a Constitutional Convention.

Sixth, I think the unified control of drafting of written law should remain in the legislature.

Seventh, I feel that the initiative of calling a Constitutional Convention has already beeh voiced by this Convention, and I think for consistency's sake, if nothing else, we again should defeat the initiative.

Lastly, the right of the people is retained to pass upon the calling of the Constitutional Convention, and thus you can't go wrong when you leave it in the hands of the people.

I would urge the defeat of this amendment.

DELEGATE JAMES: The Chair would like to speak a moment before calling for the previous question.

Delegate Linton called to the Chair's attention that Miss Shelby Carey of Charles County, Governor of Girls' State, Miss Teenage Maryland, is here to present pictures to Governor Agnew. She is here in the gallery with her parents and brothers. (Applause.)

DELEGATE JAMES: The previous question has been moved.

All in favor, say Aye; opposed, No. The Ayes seem to have it. The Ayes have it.

The question now arises on the adoption of Amendment No. 9.

The clerk will ring the quorum bell.

Delegates will record their vote.

Delegate Boileau.

DELEGATE BOILEAU: Mr. President, thank you again for giving me this opportunity to speak before the body. I vote Yes.

DELEGATE JAMES: Delegate Boileau votes Yes.

Has every member recorded his vote?

The clerk will record the vote.

There being 72 votes in the negative and 28 in the affirmative, the amendment fails for want of a majority.

Delegate Marion, do you wish to offer your amendment? This is Amendment K. The pages will distribute Amendment K.

This will be Amendment No. 10.

Point of inquiry: Has the electronics staff been working on your button, Delegate Boileau?

DELEGATE BOILEAU: I don't know, Mr. President. It still doesn't work too well.

DELEGATE JAMES: Has amendment K been distributed?

I have been advised the amendment has not returned from the print shop as yet to distribute sufficient copies.

We will proceed to another amendment and come back to that when copies arrive.

Amendment G? Delegate Weidemeyer, do you wish to offer your Amendment G?

DELEGATE WEIDEMEYER: I do, Mr. President.

DELEGATE JAMES: Do we have copies of Amendment G to be distributed? This will be Amendment No. 10, the amendment marked "G".

The clerk will read the amendment.

MR. QUILLEN: Amendment No. 10 to Committee Recommendations Nos. GP-7, GP-8, GP-9, GP-12, R&P-1, and LB-3, by Delegate Weidemeyer:

On page 2, Section 10.03, Constitutional Convention, in line 30 strike out the words "on the question" and insert in lieu thereof the words "at the election".

DELEGATE JAMES: Delegate Weidemeyer.

DELEGATE WEIDEMEYER: Mr. President and members of the Convention, we have several methods now of calling a Constitutional Convention. We are far more liberal in the calling of a Constitutional Convention than any of our previous Constitutions, 1776, 1851, 1864, or 1867.

We now have, as you have it in 10.03, that the legislature by a bare majority at any time may call a Constitutional Convention.

Secondly, the legislature can submit it to the people at any time for a vote.

Thirdly, if neither one of those procedures has been followed and a Constitutional Convention -- or they haven't taken the sense of the people, within 20 years the legislature must. That is the third.

By and large if it is submitted to the people we get away from our old provisions, our time honored concepts, of having a majority of the people vote at the election to vote for it. You have in here the words "with the majority of those voting on the question". That means exactly this; that if we have a general election and 900,000 people vote for governor but only 100,000 people vote on the question of calling a Constitutional Convention, 50,002 votes would be a majority of that 100,000, and here a bare minority of this State would be calling a Constitutional Convention, to upset and disturb every basic fundamental law we have enacted.

The words "at the election" or "at such election" have been construed by numerous courts as meaning a majority of the votes cast at the election. For example, if there were 900,000 voting for governor, then if 450,000 or 451,000 would be a majority of thosevoting for governor, it would seem to me that it is entirely reasonable, before we disturb and try to fool around with the basic law of our land, that there should be a demand and a request by the majority of our citizens. Otherwise, we are going to have minority rule instead of majority rule. We will get back to the days wyen they had 16 Constitutional Conventions -- three Constitutional Conventions in 16 years. We had one in 1851, one in 1864, and again one in 1867. Just imagine what that did to the morale of the people of the State who did not know from one day to the next whether their basic structure of law was going to be changed?

I say to you this: That if you have no faith, if you have no faith in this document we are writing, then you want to leave this in here just as it is, so that anybody at any time can come in and call a Constitutional Convention.

If you leave it that way and there were only ten people that voted on it and the rest aborted, those people could call a Constitutional Convention.

If you have no faith in this document you are writing today, leave it as it is; but if you have faith in stability of government and also in this document you are writing today you will adopt my amendment, so that if it is submitted to the people it must be then, if you adopt my amendment, a majority of all the people voting at the election, so that it would give a true sense of the people as to whether or not they want a Convention called and the basic document disturbed.

That, Mr. President, is the sum and substance of it. It takes out three words, puts in three other words; but it will mean a lot to the stability of the government of the State of Maryland.

I ask you to adopt the amendment.

DELEGATE JAMES: Delegate Gallagher.

DELEGATE GALLAGHER: I rise respectfully to disagree with my amiable and genial friend, Delegate Weidemeyer of Anne Arundel County.

I submit to Delegate Weidemeyer that if we elected members of the State Senate and House of Delegates in the same fashion which he suggests, that if a governor got 500,000 votes, assuming that to be the total number who voted for him in the election, and a member of the House of Delegates only got 245,000 votes, even though he led the ticket, neither he nor any of his compatriots would be elected to the General Assembly; because if you use the yardstick of the majority of those who vote in an election, it may well be that no one other than the lead horse may get the majority of votes cast in an election and that the innumerable offices down the line might not find a single candidate elected under those particular circumstances.

I say we should not treat issues any differently from the way we treat people. I suggest when people take the time and effort to make a conscientious decision on a subject matter such as the question of calling a Constitutional Convention, that the majority of those who voted on that question, that their decision and their will should be abided by, and not use a frustrating device such as I

referred to that was done in 1950, when almost by 2.5 to 1, as I said before, the people in the State who voted on the question of a Constitutional Convention called for it, and the General Assembly decided in its wisdom that it would not call it, because not a majority of those who voted for the Constitutional Convention constituted a majority of those voting in the General Election itself.

I submit to you that if we handled our bond issues that way, that if we handled any of our other issues in this fashion we would find government would be paralyzed and stultified.

I respectfully request that this amendment be rejected.

DELEGATE JAMES: Does any other delegate wish to be heard on this subject?

Does anybody move the previous question?

(Whereupon, the previous question was moved.)

DELEGATE JAMES: Delegate Winslow moves the previous question.

All in favor, say Aye; opposed, No.

The Ayes have it.

The question arises on Amendment No. 10.

The clerk will ring the quorum bell.

Delegates will record their vote.

Delegate Boileau?

DELEGATE BOILEAU: No.

DELEGATE JAMES: Delegate Boileau votes No.

Have all members recorded their vote?

The clerk will record the vote.

There being 63, including Delegate Boileau, 63 in the negative, 19 in the affirmative, the amendment fails for want of a majority.

Delegate Gallagher, do you wish to offer your amendment marked H as amendment 11?

DELEGATE GALLAGHER: Yes, sir.

DELEGATE JAMES: The pages will distribute Amendment H.

Delegate Stern.

DELEGATE STERN: Personal privilege, Mr. President.

DELEGATE JAMES: State the privilege.

DELEGATE STERN: I would like to introduce Joe

Raymond, Assistant States Attorney from Baltimore, and President of the Young Democratic Club of Maryland.

DELEGATE JAMES: We are very happy to welcome Mr. Raymond. (Applause.)

The Chair failed to note that this amendment is really in the unnumbered section, Continuity of Government During Emergencies.

Before raising this particular issue, the question is raised as to whether there is any other amendment, other than Delegate Marion's, to section 10.03.

Delegate Marion, we will come back to your section 10.03 when the necessary copies arrive. Somebody at the print shop will pick up the amendment very shortly.

In order to handle all, the only other amendments the Chair has over the desk, we will temporarily pass over 10.03 and go to Delegate Gallagher's amendment, and will come back to 10.04 and 10.03.

The clerk will read the amendment to the unnumbered section, entitled "Continuity of Government During Emergencies", offered by Delegates Gallagher

and Sollins, which will be Amendment No. 11, now marked "H".

MR. QUILLEN: Amendment No. 11 to Committee Recommendations GP-7, GP-8, GP-9, GP-12, R&P-1, and LB-3, by Delegates Gallagher and Sollins:

On page 3, Section ____, Continuity of Government During Emergencies, strike out all of lines 17 through 31, inclusive, and insert in lieu thereof the following:

"The provisions of this Constitution shall not be suspended, except that the General Assembly by law shall prescribe for the temporary suspension of specific provisions during an emergency caused by disasters or enemy attack. Any suspension shall be for the period of the emergency only, and only provisions of this Constitution concerning continuity of State and local public offices and governmental operations may be suspended."

DELEGATE JAMES: Delegate Gallagher.

DELEGATE GALLAGHER: Mr. President, ladies and gentlemen of the Convention:

In actuality the proposed amendment 11 which you have before you could well be classified as a style amendment.

In looking at the unnumbered section on page 3 of S&D-17, I would feelthat the Style Committee did some violence to the original meaning of this Continuity of Government During Emergencies section after it left the Committee of the Whole.

You may remember that there was colloquy when this particular provision was before you, which was originally part of LB-3. At that particular time Delegate Willoner made specific reference to the question of whether or not we would allow the other provisions of the Bill of Rights to be suspended during an emergency. I told him that was not the intention of the Committee, that the only provisions which could be suspended by prior act of the General Assembly for an emergency would be those provisions relating to continuity of State and local public offices and governmental operations, and that furthermore, the suspension would only be during the period of the emergency, so as to strictly delimit the area in time during which suspension of the Constitutional provisions could take place.

We have therefore drafted Amendment No. 11, which we think more closely parallels the original language of the Committee on the Legislative Branch, and which

hopefully at the same time will also take care of any of the possible objections which those who are quite anxious to preserve all the privileges in the Bill of Rights indicated during the floor debate.

Consequently, we have prepared this language with the expression of the hope that it better satisfies both the desires of the Committee on the Legislative Branch and the Committee on Personal Rights. Consequently, we would request that this amendment would receive your favorable consideration.

DELEGATE JAMES: Any other discussion?

Delegate Weidemeyer.

DELEGATE WEIDEMEYER: I have a question to ask Delegate Gallagher.

DELEGATE JAMES: Does Delegate Gallagher yield?

DELEGATE GALLAGHER: Yes, sir.

DELEGATE WEIDEMEYER: Inasmuch as we so rashly and quickly struck out a guarantee provision, a provision we have had time honored in our Declaration of Rights, prohibition against suspension of laws, do you feel that this amendment saying there shall be no suspension of the

Constitution also would encompass the same thing in regard to suspension of laws during emergency?

DELEGATE JAMES: Delegate Gallagher.

DELEGATE GALLAGHER: This particular section addresses itself only to the question of suspension of Constitutional provisions and not merely statutory provisions pertaining to continuity of government sofar as the officers are concerned and sofar as operations are concerned. It does not seek to reach the question of suspension of statutes.

DELEGATE WEIDEMEYER: Do you feel that question should be reached in our Constitution?

DELEGATE JAMES: Delegate Gallagher.

DELEGATE GALLAGHER: I don't think it is necessary. I think the General Assembly can address itself to what statutory provisions it would like to suspend during time of emergency, and you would not have to confer a Constitutional right to do so upon the General Assembly, because what the General Assembly may ordain it may also disordain.

DELEGATE WEIDEMEYER: The question of suspension

of laws, as I understand it, goes not to the General Assembly but goes to any person in office or anybody or any person, and provides the old provisions providing that the laws should not be suspended except by act of the General Assembly.

DELEGATE JAMES: Delegate Gallagher.

DELEGATE GALLAGHER: What I am suggesting is that in order to suspend effectively any statutes during an emergency that the General Assembly, prior to such emergency, would be required to pass legislation saying that under certain circumstances and for a designated period of time the laws shall be suspended, but shall not be suspended any longer or in any other period.

What I am saying is since the matter you raise now is a question of statutory jurisdiction that that can be handled by the General Assembly itself. But you need a Constitutional justification for suspending Constitutional provisions, and that is why this particular amendment should be adopted.

DELEGATE JAMES: Delegate Pullen.

DELEGATE PULLEN: A point of inquiry.

DELEGATE JAMES: Does Delegate Gallagher yield?

DELEGATE GALLAGHER: Yes.

DELEGATE PULLEN: As a lay man I am curious -- not necessarily opposed. What is the difference between this and martial law?

DELEGATE GALLAGHER: As I understand it, martial law is first of all a condition recognized by the chief executive who declares that certain area is under and subject to martial law, and at that time the military moves in with considerable jurisdiction.

This particular provision merely provides for the orderly continuation of holders of public office and operation of government during emergencies. It requires a prior act of the General Assembly in order to suspend the Constitutional provisions which would otherwise be operative.

For example, the question of who shall be governor is already handled by the Constitution, insofar as succession to the governorship is concerned. Suppose, however, as a result of the catastrophe that all persons named in the line of succession were killed, that it would be

impossible for the other machinery to operate to select the governor.

A General Assembly could say under those circumstances that the survivors of the General Assembly, even though a quorum were not present, could elect the governor, if the General Assembly could agree among itself as to which of those worthy gentlemen ought to be governor.

DELEGATE JAMES: Your time has expired.

It is statutory civil law; civil martial law, I guess you would call it.

Any further disu ssion?

Delegate Lloyd Taylor.

DELEGATE L. TAYLOR: Mr. President, I am going to address this question to Delegate Gallagher, and maybe the Chairman of Style and Drafting could answer the question.

DELEGATE JAMES: Delegate Gallagher's time is completed.

DELEGATE L. TAYLOR: In the Style and Drafting section on Continuity of Government During Emergencies, in line 27 it says "only to the extent necessary to preserve

continuity of State and local public office.

In the amendment submitted by Delegate Gallagher in line 13 it says "concerning continuity of State and local public offices."

It seems that the amendment by Delegate Gallagher has lost the meaning the Style and Drafting Committee had in trying to preserve continuity of State and local public offices.

In other words, Style and Drafting's amendment seems to have a positive effect, whereas the effect of Delegate Gallagher's amendment concerning continuity of offices is negative.

DELEGATE JAMES: Is the question addressed to Delegate Penniman?

DELEGATE L. TAYLOR: Yes.

DELEGATE PENNIMAN: Delegate Taylor, I think that we are all agreed now at this point that the intent of the Committee on General Provisions and the intent of the Committee on Style and Drafting has been best stated by the more recent amendment coming from Delegate Gallagher and Delegate Sollins.

They pin down, it seems to me, more precisely in those last five lines, the intention of the Committee on General Provisions, and therefore, as it went through the Committee of the Whole, precisely what was wanted.

The Committee on Style and Drafting -- excuse me; I speak for myself, not speaking for the Committee on Style and Drafting, for whom no one can speak at this point, I find that this more nearly meets what I would have preferred than any other statement of it.

DELEGATE JAMES: Delegate Gallagher, do you wish to further answer the question?

DELEGATE GALLAGHER: I will just trespass a moment.

May I suggest under the language which Delegate Taylor just made reference to existing in page 3 that if the State of Maryland found that it was necessary in order to preserve the continuity of State and local public offices that 2,000 people should be jailed because otherwise they would be assassins of all those who held public office, you could, under this language, simply jail these people. I don't think that is what we intended, and I don't think

Style and Drafting intended that.

I would hope under these circumstances the amendment would be adopted.

DELEGATE JAMES: Delegate Taylor.

DELEGATE L. TAYLOR: I am still sort of in doubt. It seems to me you are trying to preserve continuity of government, this was the intention of the changes in style, to preserve continuity of government --

DELEGATE JAMES: Are you addressing a question to anyone, Delegate Taylor?

DELEGATE TAYLOR: Either Delegate Gallagher or Delegate Penniman.

Originally they had in the first proposal, this continuity of government, they were trying to retain the continuity of government, preserve continuity of government. Here you have something concerning continuity of government, and the last amendment by Delegate Gallagher doesn't say anything about preserving continuity of government. This is why Iam sort of in doubt about it.

DELEGATE JAMES: Do you understand the question, Delegate Penniman? To whom is that question

addressed, Delegate Taylor; to Delegate Penniman or Delegate Gallagher?

DELEGATE TAYLOR: Delegate Gallagher.

DELEGATE JAMES: Do you understand the question, Delegate Gallagher?

DELEGATE GALLAGHER: I think it is a question of phraseology. It is our intention in this second sentence of Amendment No. 11, wherein we say "Any suspension shall be for the period of the emergency only, to make sure that the suspension is extremely tightly construed in a time fashion and only provisions of this Constitution concerning continuity of State and local public offices and concerning inferentially their governmental operations may be suspended, so that we try to indicate that we do not want to get into any other spheres of the Constitution, and particularly not Bill of Rights spheres, so we cannot suspend personal rights and privileges.

DELEGATE JAMES: Delegate Taylor.

DELEGATE L. TAYLOR: One last question:

Supposing in line 13 you add "concerning the preservation of continuity of State and local public

offices"? Would that be more accurate? Would this be the sense you are trying to obtain?

DELEGATE JAMES: Delegate Gallagher.

DELEGATE GALLAGHER: I think I could put preservation of continuity of State and local public offices, but I don't think it adds anything. It would be by way of emphasis.

I think the sentence is clear as it is written.

DELEGATE JAMES: Delegate Scanlan.

DELEGATE SCANLAN: I have some doubt about the amendment. No one has a higher regard for liberty and personal rights than myself, but in an emergency of the sort contemplated by the provision if the Federal Government didn't move -- and I suppose the Federal Government would move, either through civil or military authorities -- many situations would arise, if the British experience is any indication, where personal rights would have to be somewhat abridged. The whole problem of curfews, the problem of looting that often arises in this type emergency, would present problems that might require some suspension of the ordinary rights of the accused, and

certainly some circumscription of the ordinary freedom of movement on the part of the citizen.

As I understand Delegate Gallagher's explanation of his amendment, at least insofar as the State is concerned, that would be prohibited; those would be matters not falling under provisions of the Constitution regarding continuity of public offices and governmental operations.

If that is the intention of the amendment, I don't think it would be much good in an emergency.

DELEGATE JAMES: Delegate Gallagher.

DELEGATE GALLAGHER: Mr. President, Ladies and Gentlemen:

I submitted substantially the same language to General Leonardo von Brundt who appeared before the Committee on the Legislative Branch and urged adoption of this type language.

I might say we start out exactly by combining the New Jersey and Rhode Island emergency sections, and we redistilled that.

We came in here with a Committee of the Whole

Report which was adopted, and an attempt was made by Drafting and Style to merge the wishes of both Personal Rights and ourselves, and we do feel that we have arrived at as much as we can get at, and civil defense has indicated that it is satisfied with this.

In view of the fact that in cases where the Federal Government wants to move in you have an entirely different governmental power operating, what the Federal Government does is entirely its own problem and its own sphere. All we attempt to do here is try to provide for two things: continuity of State and local public offices and government operations. In that the General Assembly must act before the fact. I think that is the important thing.

In other words, it must spell out the conditions, the whys and wherefores, before any of these Constitutional provisions can be suspended. It may not be as much as the Civil Defense group would like, but at the same time, it certainly does not invade the area of personal rights, but does provide for two objectives which we sought at the beginning.

DELEGATE JAMES: I am afraid Delegate Gallagher's time has expired.

DELEGATE WEIDEMEYER: I move the previous question, inasmuch as we can amend the Constitution at any time, I think, if there is something wrong with it.

DELEGATE JAMES: All in favor of moving the previous question say Aye; opposed, No.

The Ayes seem to have it. The Ayes have it.

The clerk will ring the quorum bell.

They always do curtail rights -- they just can't afford to admit it -- during emergencies.

DELEGATE SCANLAN: I am sure another reading of this provision will go unnoticed.

DELEGATE JAMES: Delegates will record their votes.

Has everyone recorded their votes?

Delegate Boileau.

DELEGATE BOILEAU: Yea.

DELEGATE JAMES: The clerk will record the votes.

There being 86 votes in the affirmative -- 87 votes in the affirmative, 16 in the negative, the amendment

is adopted.

Are there any further amendments to the unnumbered section on page 3 as amended by Amendment 11?

The Chair hears none.

The pages will please distribute Amendment K, which will be Amendment No. 12. Amendment K for "king" will be Amendment No. 12.

The clerk will read the amendment.

MR. QUILLEN: Amendment No. 12 to Committee Recommendations Nos. GP-7, GP-8, GP-9, GP-12, R&P-1, and LB-3 as amended by Report No. S&D-17, by Delegate Marion:

On page 2, Section 10.03, Constitutional Convention, strike out all of lines 47 through 52, inclusive.

THE PRESIDENT: The amendment is submitted by Delegate Marion. Is there a second?

(Whereupon, the amendment was seconded.)

THE PRESIDENT: The amendment having been seconded, the Chair recognizes Delegate Marion.

DELEGATE MARION: Mr. President, the purpose of this amendment is to delete from section 10.03 the last sentence, which relates to submission to the voters of any

proposals recommended by the Convention, by the Constitutional Convention, for changing the Constitution. Up to that point in section 10.03, the entire section relates to the procedures, internal procedures of the Convention, and for the calling of a Constitutional Convention.

The process of Constitutional amendment is detailed in section 10.02. In that section it is clear that there are two methods by which an amendment may be proposed. One is by adoption of a proposed Constitutional amendment by three-fifths of all members of the General Assembly; and second, by the affirmative vote of all members of the Constitutional Convention.

That section then goes on to detail the procedure by which such a proposed Constitutional amendment is to be submitted to the voters.

I think that the last sentence of section 10.03 is unclear and poses certain questions as to what a proposal is for changing the Constitution that may or may not be different from an amendment of the Constitution under section 10.02.

I would believe that what is intended by the

last sentence of section 10.03 is in effect to incorporate by reference the provisions of section 10.02, but if that is the purpose, it does not do so in its entirety because it does not provide the vote by which such a proposal must be adopted by the Constitutional Convention. If you call an amendment a proposal, it is unclear whether section 10.02 would apply.

It also does not carry into section 10.03 the last sentence of section 10.02 which provides for an effective date of an amendment. There would seem to be some doubt as to what the effective date would be and whether the "unlessotherwise provided" language of section 10.02 applies to an amendment, which would be called a proposal if it were submitted to the voters under the last section of 10.03.

I don't think there is any proposal for changing the Constitution which is not an amendment. Therefore, I submit that this sentence in 10.03, which up to that point deals just with the calling of the Constitutional Convention and its internal organization, this sentence should be deleted. We should leave intact the language of section 10.02 which sets forth procedures that thus far

we have felt necessary for submission of such a proposed amendment, whether it be an amendment of one section or several sections, or whether it be an amendment which would substitute the entire new Constitution for the present Constitution.

I respectfully urge you support this amendment and delete this last confusing sentence to section 10.03.

THE PRESIDENT: Delegate Boyer.

DELEGATE BOYER: Mr. President, I am frankly a little confused about the intent of this amendment. My understanding is that the amendment -- I imagine we are talking about English words here, the definition of words -- an amendment is a change of any proposal, as we have been doing here. The proposal, however, is broader than the amendment. Any proposal recommended by the Convention, a recommendation to change the Constitution, has to be approved in some manner or other.

The General Provisions Committee and Style Committee have agreed that any proposal for recommended change in the Constitution should be approved by the same manner in which an amendment to the Constitution is approved.

Frankly, we prefer the wording in this recommendation to you, not the wording of the amendment. For some reason or other, I can't quite grasp the thread of thought of Delegate Marion's proposal, this amendment here, to take out the verbiage in this particular section. We would prefer to keep it in there as the Style Committee has suggested.

THE PRESIDENT: Delegate Mentzer.

DELEGATE MENTZER: Mr. President, I cannot see the distinction that Delegate Boyer does between proposal of the Convention and amendment. In this body we often pay lip service to the ideal of a more concise Constitution, and we often get away from that goal. Here we have an opportunity to put this ideal into practice and to do no violence to the substance of the provisions.

The treatment of amendments proposed either by the General Assembly or by a Constitutional Convention is fully covered in section 10.02. It does not have to be repeated in 10.03. I would urge support of this amendment.

THE PRESIDENT: Any further discussion?

At the risk of -- Delegate Gleason.

DELEGATE GLEASON: Mr. President, I plead for a little clarification of not only the amendment, but also the last sentence in section 10.03. I gather what Delegate Marion is saying is that by using the word "proposal" rather than "amendment", and also the fact that in the last, or in section 10.02 it is provided the method by which amendments, proposed amendments submitted by the Constitutional Convention shall be approved by the electorate, that this tends to confuse the entire matter. I am inclined to agree with him.

But I certainly would like a little bit of explanation from the Chairman with reference to the necessity of having this last sentence in section 10.03.

THE PRESIDENT: Delegate Boyer.

DELEGATE BOYER: Mr. President, on reflection, and after talking with my legal eagle here, the intent of it originally was any proposal recommended by the Convention after the Convention is called calling for a change in the Constitution shall be submitted to the voters. Originally reading, now, "shall be submitted to the voters

for adoption". This is what we would prefer, to refer it back to the people and let them act on it, either affirmatively or negatively, and let them make a final approval. This is the langauge I think the General Provisions Committee intended and had so recommended.

THE PRESIDENT: Delegate Gleason.

DELEGATE GLEASON: May I ask this, Delegate Boyer: Is it included within your concept of the word "proposal," for example, the transitional legislation? This is to be included?

THE PRESIDENT: Delegate Boyer.

DELEGATE BOYER: Yes, Delegate Gleason. The proposal was broader than an amendment. It would include schedule of legislation, transitional provisions, or any other matter which would have the force and effect of any Constitutional provision.

THE PRESIDENT: Delegate Gleason.

DELEGATE GLEASON: Isn't the transitional legislation actually a change in the Constitution?

THE PRESIDENT: Delegate Boyer.

DELEGATE BOYER: Yes, it would be a change in

the Constitution, because it has the same force and effect as the Constitution.

The schedule of legislation is only a temporary arrangement until repealed or amended by the General Assembly itself.

THE PRESIDENT: Delegate Bamberger.

DELEGATE BAMBERGER: I am now concerned with the Chairman's response to Delegate Gleason's question because I would not understand that the language in lines 47 to 52 covers that kind of legislation.

THE PRESIDENT: Delegate Boyer.

DELEGATE BOYER: I am sorry. Delegate Bamberger is confused. It is certainly the intent. We will soon have GP-13 before us, dealing with transitional provisions and scheduled legislation. If you could for a minute act in an invisible manner on this, consider the transitory provisions.

This, if recommended by this Convention, would be a proposal by this Convention, in the broadest sense of the word; not a narrow proposal sense.

THE PRESIDENT: Delegate Bamberger.

DELEGATE BAMBERGER: Chairman Boyer, my question is, I don't consider those proposals for changing the Constitution.

THE PRESIDENT: Delegate Boyer.

DELEGATE BOYER: Certainly if we adopt, it appears to me, anything in the transitional provision, it would make a drastic change in the Constitution, because it would have the thrust of the Constitution itself, it would have the same impact and same force and effect.

THE PRESIDENT: Delegate Gallagher.

DELEGATE GALLAGHER: May I address a question to Delegate Boyer?

THE PRESIDENT: Delegate Boyer, do you yield to a question?

DELEGATE BOYER: Yes.

THE PRESIDENT: Delegate Gallagher.

DELEGATE GALLAGHER: Mr. Boyer, these last five lines, "Any proposal recommended by the Convention for the changing of the Constitution shall be adopted in the same manner as an amendment", an amendment before the General

Assembly requires a three-fifths vote of both the House and Senate. Would it be your interpretation that if the Constitutional Convention were called that no provision recommended by the Constitutional Convention could be passed by a simple majority vote, but would require a three-fifths vote in the same manner as one adopting an amendment?

THE PRESIDENT: Delegate Boyer.

DELEGATE BOYER: Now I know Delegate Gallagher is not filibustering, and I think he does have a correct point here. The original language, if you refer to that stricken by the Style Committee, submitted to the voters of the State for adoption or rejection, and would only be effective if approved by majority of those voting thereon.

THE PRESIDENT: Delegate Gallagher, I am not sure that I correctly followed your question, but I would not assume that the General Assembly adopted an amendment. Under the language of section 10.02 the General Assembly maypropose and amend, but not adopt and amend.

I would take it that the language in 51 and 52 referring to adoption of the amendment would refer

only to the provision beginning in line 4 on page 2, the provisions of section 10.02, which is the original portion referring to adoption.

Delegate Gallagher.

DELEGATE GALLAGHER: Mr. Chairman, I agree. I wanted to clarify it because I thought it was possible to argue the three-fifths rather than simple majority vote, and I wanted to get it eliminated.

THE PRESIDENT: Delegate Marion.

DELEGATE MARION: By oversight I did not, I think, make absolutely clear what the sentence is on which we are now, which we are considering.

By an amendment on Saturday the sentence was restored virtually to the condition in which it came from the Committee of the Whole, so that the sentence which my motion, my proposed amendment would strike reads "Any proposal recommended by the Convention for changing the Constitution shall be submitted to the voters of the State for adoption and shall be effective only if approved by the affirmative vote of a majority of those voting on the proposal."

The style amendment was rejected, and we are back virtually to the original language of the Committee of the Whole. I think that may have caused Chairman Gallagher some concern. But let me say this, further:

If an amendment -- and "proposal" seems to me certainly to encompass amendment, since we are talking about proposals for changing the Constitution -- if an amendment is called a proposal, is it submitted to the people simply under the language of this last sentence if we leave it in, or is it submitted to the people with the further restrictions and provisions of section 10.02?

I just can't accept the theory that there are proposals for changing the Constitution which are not simply amendments to the Constitution. I don't believe the schedule of legislation is a proposal for changing the Constitution. The Constitution gets changed in the Constitution or the proposed new Constitution, which is an amendment to the Constitution.

I believe the schedule of transitional provisions which we are considering and which will have constitutional effect are, in effect, a constitutional amendment. I just

don't believe there is a proposal for changing the Constitution which is not an amendment, and so, therefore, this sentence confuses rather than adds anything more to these two sections which is not already provided for and spelled out in a little more and better detail in the language of section 10.02 which details how the Constitution may be amended.

THE PRESIDENT: Delegate Gleason.

DELEGATE GLEASON: I wonder if the President would be good enough to enlighten us with his views on this controversy, if he has any.

THE PRESIDENT: Delegate Scanlan rose. I will recognize him first.

DELEGATE SCANLAN: In partial rejoinder to Delegate Marion and in partial justification for what the General Provisions Committee did, I do think the concept of the proposal is not necessarily coextensive with the concept of amendments.

I direct Delegate Marion's attention to the present Constitution, in section 2 of Article XIV, which says "but any Constitution or change or amendment of the

existing Constitution" -- then follows the language that similarly follows in proposed section 10.03.

In sort, I think it fair in this section to use a term that is broader than an amendment, because what we are going to submit to the voters, hopefully, on May 14, will be a new Constitution. I think it fair to regard that in a different category.

In the old Constitution they specifically spelled it out. Apparently the General Provisions Committee and Style Committee have agreed upon the word "proposal" to embrace something more than the ordinary amendment. I think there is justification for it, and also I think it is justified in the old Constitution.

While there may be some quarrel with the term "proposal," nevertheless, I think some term should be used which encompasses amendment, yes, but above and beyond amendment, including the whole Constitution, if necessary.

DELEGATE **MARION**: Would Delegate Scanlan yield to a question?

THE PRESIDENT: Would he yield for a question?

DELEGATE **MARION**: Yes.

DELEGATE SCANLAN: Yes.

DELEGATE MARION: Regardless of what it is called in the old Constitution, does it not go on to provide the same procedure or whatever it is that is going to change the Constitution?

THE PRESIDENT: Just a second, please.

DELEGATE SCANLAN: Yes, it does. Yes,the old Constitution, after specifying any Constitution, change or amendment, goes on to set out how it is to be adopted, how it shall become effective, which is the same as an amendment. That is exactly what the General Provisions Committee language does; so therefore I think I am in the position of Mark Twain, Delegate Marion, the more you explain your amendment, the more I don't understand it.

THE PRESIDENT: Is there any further discussion?

Delegate Gleason asked the Chair to comment. For what it is worth, the Chair's comment is as follows:

I think Delegate Marion is quitecorrect in saying that technically what is spoken of as a proposal in section 10.03 is an amendment.

But I don't believe that is the ordinary

understanding of the term. I think that most people think of an amendment as encompassing something less than a complete revision of the entire Constitution. I am a little fearful that in the context of section 10.02,where obviously the amendment proposed by the General Assembly is intended to refer to an amendment that is something less than a complete revision, the amendment proposed by the Convention would be thought of as in the same character.

In section 10.03 what is contemplated is at least the possibility that there would be a complete revision, and whether the word proposal is the most apt word to describe it, I don't know. I think there is a sufficient difference to warrant the inclusion in 10.03 of the additional language.

Let me call your attention to the fact, as pointed out by Delegate Marion, that by Amendment No. 2 as modified the last five lines of section 10.03 now reads "Any proposal recommended by the Convention for changing the Constitution shall be submitted to the voters of the State for adoption and shall be effective only if approved by the affirmative vote of a majority of those voting

on the proposal."

Any further discussion?

Delegate Marion has already spoken twice. Is there any objection to his speaking a third time?

The Chair hears none; unanimous consent.

The Chair recognizes Delegate Marion.

DELEGATE MARION: Mr. President, in view of your explanation, I want to direct a further question to you, if I might, sir.

THE PRESIDENT: Certainly.

DELEGATE MARION: If the construction of amendment in section 10.02 is limited to the extent that you indicated it is, or might be, in popular usage, would that mean then that the General Assembly through its amendmend process by submitting to the voters by a previous vote of members of both houses could not submit a proposal, or in broader context, an amendment, which would have the effect of changing the entire Constitution and substituting therefor a new Constitution?

THE PRESIDENT: No, indeed. And the Chair did not mean to indicate that the word "amendment" in section

10.02 was limited as you have indicated.

The Chair said, or thought he said, that technically I think you are correct. I think the term "amendment" in 10.02 is coextensive with "proposal" in 10.03.

I am suggesting only that in popular understanding, even though the General Assembly may submit an amendment under 10.02 which would accomplish a complete revision of the Constitution,and even though a Constitutional Convention under 10.02 could do the same thing, this is not the normal procedure, and what most people would be thinking of under 10.02 is something less than that.

Delegate Marion.

DELEGATE MARION: This further question:

If that is the case, and if the power of the General Assembly to submit amendments and the pwoer of the Constitutional Convention to submit amendments is to be coextensive, should not the word "amendment" be broadened to encompass the concept sought to be included in this last sentence of section 10.03 in section 10.02 where we deal with the processes of Constitutional amendment, and delete this sentence from section 10.03?

THE PRESIDENT: It could be. I don't think it need be. I think again that you are adhering too literally to the technical meaning of the terms, rather than with their popular concept. I don't think the language in the sentence beginning in line 47 in section 10.03 is imperative. I think to have it there would cause less confusion than to not have it there.

Delegate Anderson.

DELEGATE ANDERSON: Mr. Chairman, I move the previous question.

(Whereupon, the motion was seconded.)

THE PRESIDENT: All in favor, signify by saying Aye; contrary, No.

The Ayes have it. It is so ordered.

The clerk will ring the quorum bell.

The question arises on adoption of Amendment No. 12. A vote Aye is a vote in favor of the amendment. A vote No is a vote against.

Cast your votes.

Has every delegate voted?

Delegate Boileau.

DELEGATE BOILEAU: No.

THE PRESIDENT: Delegate Boileau votes No.

Does any delegate desire to change his vote? The Clerk will record the vote.

There being 14 votes in the affirmative and 83 in the negative, the motion is lost and the amendment rejected.

Delegate Penniman, earlier today the Chair suggested to Dr. Phillips, the staff adviser of your committee, the possible necessity or desirability of further amendment to section 10.02. Has he discussed it with you or your committee?

DELEGATE PENNIMAN: No, he has not.

THE PRESIDENT: The Chair would like to put the question then to Delegate Boyer and also to you, Delegate Penniman. It is more a question of substance, but it may be effected by a style change.

As section 10.02 is now written, it provides for the amendment of the Constitution either by the proposal by the General Assembly or it proposed by the members of the Constitutional Convention. Then, in the sentence

beginning in line 4 it provides that any proposed amendment, which would mean one proposed either by the General Assembly or by the Convention, shall be submitted to the voters of the State at a special or general election as determined by the General Assembly or by the Convention, whichever proposed the amendment.

In other words, if the amendment is proposed by the General Assembly, then the General Assembly will decide whether it is to be submitted at a special or general election. If it is proposed by the Convention, then the Convention will make this determination.

In the next sentence, however, this option is not preserved and it is provided that notice of the election shall be given as the General Assembly shall prescribe by law.

I wonder if this was intentional or whether the Committee on General Provisions meant to give the same option to the General Assembly and to the Convention as to notice as it did as to the kind of election to be prescribed.

Delegate Boyer.

DELEGATE BOYER: Mr. President, I view this

a little differently than you, evidently.

The General Assembly, of course, shall pass all election laws. Hopefully there will be a new set of election laws out very shortly. In those election laws I am sure that somewhere in there there is going to be required notice of any election, and that is what I interpreted.

THE PRESIDENT: In other words, you were not thinking of a special legislative act to provide notice for this particular election?

DELEGATE BOYER: No, sir. I was thinking of an all-encompassing, incorporating any election into election laws that may have previously been determined by the General Assembly.

THE PRESIDENT: Delegate Penniman.

DELEGATE PENNIMAN: This is a substantive question, but I wanted to correct the record.

Mr. Philips did raise the question with me. He raised it, however, during the period when we were discussing education this morning, and I think understandably I did not take note of it.

THE PRESIDENT: Delegate Gallagher.

DELEGATE GALLAGHER: Mr. President, in the event that one should decide that the Constitutional Convention could set a date for a special election on the Constitution which it produced, how would it go about providing funds for the special election, if you gave the Constitutional Convention the option?

THE PRESIDENT: I suppose it could, but I think your point is well taken. I think Delegate Boyer's answer is the one that is most apt to apply in most cases.

Are there any further amendments to section 10.02 or 10.03?

Delegate Koss.

DELEGATE KOSS: Mr. President, in reference to this colloquy just concluded in terms of what Delegate Boyer said in terms of requiring election laws, the present election laws do require every Board of Election supervisor shall give public notice of time and place of all elections in each precinct. In view of that, I wonder whether this language in here is absolutely necessary.

THE PRESIDENT: Delegate Boyer.

DELEGATE BOYER: I would concur it is not absolutely necessary. Absolute is, of course, a generic term. I can see no harm that it does, and would prefer that it stay in to relieve any doubt or fear that there might be a slip up.

THE PRESIDENT: Very well.

Are there any further amendments to any of the sections of Committee Recommendation GP-7, GP-8, GP-9, GP-12?

Delegate Beatrice Miller.

DELEGATE B. MILLER: I would like to get back to that same question of notice. If Chairman Boyer does not feel this is anything different than we already have provided for and is not necessary, this Constitution is getting longer and longer, especially the longer it takes on this floor. I for one would like to move that we strike the sentence.

THE PRESIDENT: Delegate Miller, the Chair would suggest to you that while this may not be absolutely necessary because of the plenary power of the legislature, the fact that notice is provided for in the statute now

is not the answer. You do have in the area of Constitutional Conventions a considerable area of disagreement as to the power of the Convention versus the power of the General Assembly, and the inclusion of this sentence would, I think, set at rest any question as to whether the General Assembly could prescribe by law for notice of a special election required by a Constitutional Convention.

Delegate Gill.

DELEGATE GILL: Mr. President and Delegate Miller, the last vote lost by 14 to 83. Since Delegate Miller is on the Style Committee, perhaps with the aid of the committee they can come up with a word for "proposal" that will solve this problem and then reconsider it.

THE PRESIDENT: I am sorry. I didn't understand your last statement.

DELEGATE GILL: She wanted to reconsider it.

THE PRESIDENT: She didn't want to reconsider the question. I think you misunderstood her. She raised a question about another sentence in lines 9 and 10 on page 2.

DELEGATE GILL: The suggestion I made I hope will

be followed. It seems if the word "proposal" needs to be changed to another word that the Style Committee could take care of it.

THE PRESIDENT: If there are no further amendments, the question will arise on the adoption of Committee Recommendations GP-7, GP-8, GP-9, and GP-12 as amended. The clerk will ring the quorum bell.

The question arises on the adoption on second reading of committee recommendations GP-7, GP-8, GP-9 and GP-12 as amended. A vote Aye is a vote in favor of the adoption of the committee recommendations as amended; a vote No is a vote against.

Cast your votes.

Has every delegate voted?

Delegate Boileau.

DELEGATE BOILEAU: Yea.

THE PRESIDENT: Delegate Boileau votes Aye.

Has every other delegate voted? Does any delegate desire to change his vote?

The clerk will record the vote.

There being 107 votes in the affirmative and 4

in the negative, Committee Recommendations GP-7, GP-8, GP-9 and GP-12 as amended are adopted on second reading and are referred to the Committee on Style, Drafting and Arrangement.

The next item on the calendar is the Report of the Committee on Style, Drafting and Arrangement No. S&D-14. This has to do with Committee Recommendation LB-2 and 3 and GP-10.

The Chair recognizes -- for what purpose does Delegate Gallagher rise?

DELEGATE GALLAGHER: Parliamentary inquiry.

Mr. President, among the recommendations which we just considered in S&D-17 were portions of R&P-1 and LB-3 pertaining to continuity of government during emergency. As you put the question to the Convention I think you restricted approval to GP-7, GP-8, GP-9, GP-12.

THE PRESIDENT: I think so that there will be no question about it, the Chair should put the question again and restate it in somewhat different form.

This is a restatement of the question on which you just acted: The question arises on the adoption of

the Committee Recommendations as amended embraced in the attachment to the Report of the Committee on Style, Drafting and Arrangement No. S&D-17. A vote Aye is a vote in favor of the Committee Recommendations as amended and contained in the attachment to that Report of the Committee on Style. A vote No is a vote against.

Cast your votes.

Has every delegate voted?

Delegate Boileau.

DELEGATE BOILEAU: Yea.

THE PRESIDENT: Delegate Boileau votes Yea.

Has every other delegate voted? Does any delegate desire to change his vote?

The Clerk will record the vote.

There being 102 votes in the affirmative and 1 in the negative, the motion is carried and those portions of committee recommendations contained in the attachment to the Report of the Committee on Style, Drafting, and Arrangement S&D-17 as amended are adopted on second reading and referred to the Committee on Style, Drafting and Arrangement.

Delegate Gallagher, I think the Chair overlloked, in calling for the item Committee Report S&D-14, the amendment that you desired to make under suspension of rules to Committee Report S&D-16 that the Chair earlier had distributed.

Do you desire to make that at this time?

DELEGATE GALLAGHER: I do, Mr. Chairman. That would be "II".

THE PRESIDENT: Very well.

The Chair incorrectly announced the result of that last vote. It is 103 in the affirmative, 1 in the negative.

You already all havethe distributed amendment II. This will be Amendment No. 22.

Delegate Gallagher,does the Chair understand you desire to move that the vote by which Committee Recommendations LB-1, LB-2, and LB-3, except with respect to sections 3.03, 3.04, 3.14 and 3.19 and 3.23 were adopted on second reading be reconsidered so that you may offer an amendment, further amendment to section 3.11; and that you also move for a suspension of rules so that the

motion may be considered immediately?

DELEGATE GALLAGHER: I do, Mr. President. I move suspension of the rules, and I move that the approval given to the designated sections be reconsidered for the purpose of offering Amendment II.

THE PRESIDENT: Delegate Gallagher, the parliamentarian has a simpler way to do this. He suggests you move to suspend the offending rules so that you may offer Amendment 22 to section 3.11.

DELEGATE GALLAGHER: I so move, Mr. President.

THE PRESIDENT: Is there a second?

(Whereupon, the motion was seconded.)

THE PRESIDENT: This requires a roll call vote.

Delegate Gallagher moves thatthe offending rules be suspended so as to permit him to offer Amendment 22 to Section 3.11, and permit immediate consideration thereof. All in favor of the suspension of the rules, indicate by voting Aye.

Has every delegate voted? Does any delegate desire to change his vote?

The clerk will record the vote.

There being 89 votes in the affirmative, none in the negative, the rules are suspended.

Amendment 22 is before you.

The Chair recognizes Delegate Gallagher, the amendment having been seconded by Delegate Gilchirst.

DELEGATE GALLAGHER: Mr. President, ladies and gentlemen of the Convention:

When the Committee on the Legislative Branch adopted 3.11, which is a limitation on appointment of legislators to offices created while they were members of the General Assembly or offices for which compensation was increased, it was the intention of the Committee on the Legislative Branch that no member of the General Assembly could resign and thereafter be appointed to an office which had been created.

We used language which indicated that the terms during which he could not be appointed to such office were the full term to which he was elected.

If you will read section 3.11 as it came out of the Style and Drafting Committee, you will note it now says "No person elected or appointed to the General Assembly

shall during his term of office be appointed to any office which shall have been created", et cetera.

We are somewhat fearful that the use of the words "his term of office" would indicate that if he resigned at the end of two years or one year or three years that he could, during the balance of that four-year term, be appointed to an office which had been created while he was a member of the General Assembly.

Conseuqently, we are moving to restore the intent of the committee with morespecific language, by inserting the following before the comma on line 29. It would read: "for which he was elected or appointed". The term of office, therefore, for which he was elected or appointed.

Then in line 32, you would strike out "his" term, which again raises the question of whether or not it was his term actually served or the full time to which he was elected, and use the word "such", referring back to the term for which he was elected or appointed.

I think this more accurately keeps the original intention of the Committee on the Legislative Branch, and

I would urge the adoption of the amendment.

THE PRESIDENT: Are there any questions of the sponsor of the amendment? Is there any discussion?

Are you ready for the question?

The clerk will ring the quorum bell.

Delegate Boileau.

DELEGATE BOILEAU: May I ask Delegate Gallagher a question?

THE PRESIDENT: Delegate Gallagher, do you yield for a question?

DELEGATE GALLAGHER: Yes, sir.

THE PRESIDENT: Delegate Boileau.

DELEGATE BOILEAU: Pardon my atrdiness. I was looking up the section.

4.09 of the Executive Article has a note that if the vacancies in the office of Governor or Lieutenant Governor exist at the same time during the first year of their term the office shall be filled for the remainder of the term at the next general election.

Does that mean that if the salary of the Governor or Lieutenant Governor has been retained by that General

Assembly that no one in that General Assembly would be eligible to run for the office of Governor or Lieutenant Governor?

THE PRESIDENT: Delegate Gallagher.

DELEGATE GALLAGHER: Well, as I understand it, if they raised the salary during this term, the term hasn't been completed, a member of the General Assembly could not succeed to the office for the remainder of the Governor's or Lieutenant Governor's original term.

THE PRESIDENT: Delegate Boileau.

DELEGATE BOILEAU: It is not a matter of succession. It is a general election for the remainder of that particular term; not succession.

THE PRESIDENT: Delegate Gallagher.

DELEGATE GALLAGHER: I didn't understand.

THE PRESIDENT: He was pointing out to you it would not be succession, but would be a new election.

DELEGATE GALLAGHER: If it is a new election there is nothing to prohibit a member of the General Assembly from being elected; but he cannot merely be appointed. We differ from the old Constitution in the sense that

in the new Constitutional language a man can be elected to an office which was created during his term, or the salary of which was raised during his term, that is fine. He simply can't be appointed.

THE PRESIDENT: Delegate Case.

DELEGATE CASE: Would Delegate Gallagher yield for a question?

THE PRESIDENT: Delegate Gallagher?

DELEGATE GALLAGHER: Yes.

THE PRESIDENT: Delegate Case.

DELEGATE CASE: Delegate Gallagery, so that I can clearly understand the intent of your committee let me put this hypotheitcal situation to you:

Suppose Mr. X is elected to the House of Delegates and after one year of service for reasons best known to him he resigns. Then three years later, or at the end of that term while he is back in private employment the General Assembly creates an office. Is it the intention of your committee to preclude that particular resigned delegate from being able to be appointed to that particular office?

THE PRESIDENT: Delegate Gallagher.

DELEGATE GALLAGHER: If the appointment would take place during a period of time that he would have served had he not resigned, then he is prohibited from being appointed to the position.

THE PRESIDENT: Delegate Case. Is it the appointment or the creation of the office? That is the thing that gets me a little bit.

THE PRESIDENT: Delegate Gallagher.

DELEGATE GALLAGHER: It is the intention of the Committee to preclude anyone who was elected to an office, regardless of when he resigned and regardless of when within the four year term the office was created or salary of which was increased. It is the intention of the committee to prohibit him during that same four year period from ever being appointed to an office which was created or salary of which was increased.

THE PRESIDENT: Delegate Case.

DELEGATE CASE: Chairman Gallagher, not that I am disagreeing with you, but does this go further than the philosophy of General Provisions found in the constitutions across the country on this, namely

that is not what the prohibition seeks to strike at are people who participate in the creation of offices and then resign and get the benefit of their creating ability, whereas in the case we have been discussing, of course, the prospective candidate would not have had any, or played any part in the creation of the office, yet he still nonetheless would be barred from accepting appointment to that office?

THE PRESIDENT: Delegate Gallagher.

DELEGATE GALLAGHER: Of course someone who decided he had a good opportunity to fill an office which was about to be created by the General Assembly, who was a member of the General Assembly could simply resign the day before the office was created and say, "I was not there to vote upon the creation of the office, and therefore I ought to be allowed to be appointed to the office."

I think in order to take care of the situation generally you have to have a general prohibition.

Some people may have resigned in good faith and had nothing to do with the creation of the office because it occurred after they left, or they may actually have

been parties to all the pre-final determinate activity that goes on in a General Assembly.

DELEGATE CASE: Sort of occupational hazards of being a member of the General Assembly, would you say?

THE PRESIDENT: Delegate Gallagher.

DELEGATE GALLAGHER: It is part of the glory of the office, yes.

THE PRESIDENT: Delegate James.

DELEGATE JAMES: Another one of the burdens we must bear.

Mr. Chairman, I would like to pose a question to Delegate Gallagher.

THE PRESIDENT: Does Delegate Gallagher yield to a further question?

DELEGATE GALLAGHER: Yes.

THE PRESIDENT: Delegate James.

DELEGATE JAMES: How does this affect judicially ambitious legislators? In the past the system has been to pass a Constitutional amendment and put a savings clause in the Constitutional amendment. Not having any judicial ambitions, I am not particularly interested myself, but

having turned it down on one or two occasions, seriously, under the new plan, as I understand it, the judicial judgeships would be created by statute.

On the other hand, we have a non-political system of appointing judges now, so really the reason for barring the legislator as a possible candidate might no longer exist.

I would like your answer to that particular question.

THE PRESIDENT: Delegate Gallagher.

DELEGATE GALLAGHER: I recognize the judiciary might be deprived temporarily, 3 years and 364 days, of services of an able State senator, but it seems to me a willing governor perhaps might see to it that the office wasn't created until the end of the four-year term, and he could very nobly succeed.

We know that particular abuse is not directed solely at filling judicial offices but other offices where compensation may be increased. I appreciate you are not a member of the judiciary, because you do such a great job in the Senate.

THE PRESIDENT: Delegate Marion.

DELEGATE MARION: Could this section be said to be construed to prevent the appointment if a vacancy should occur in the office of lieutenant governor, of any member of the General Assembly from being appointed by the Governor to fill that vacancy if the comensation for that office had been increased during that term?

THE PRESIDENT: Delegate Gallagher.

DELEGATE GALLAGHER: Yes.

THE PRESIDENT: Are you ready for the question?

Section 3.11 has already been considered on second reading. Under a suspension of rules you are now considering a further amendment to section 3.11 after second reading by amendment 22. A vote Aye is a vote in favor of the amendment; a vote No, a vote against.

Cast your votes.

Has every delegate voted?

Delegate Boileau?

DELEGATE BOILEAU: Yea.

THE PRESIDENT: Delegate Boileau votes Yea.

Has every other delegate voted? Does any delegate

desire to change his vote?

The clerk will record the vote.

There being 91 votes in the affirmative and 12 in the negative, the motion is carried. Section 3.11 as adopted on second reading is amended by Amendment No. 22.

We now turn to consideration of the Report of the Committee on Style, S&D-14.

Before I do that, I overlooked having the clerk read into the record Amendment No. 22, just passed. I ask him to read it at this time.

MR. QUILLEN: Amendment No. 22 to Committee Recommendations Nos. LB-1, LB-2, and LB-3 as amended by Report No. S&D-16, by Delegate Gallagher:

On page 4, Section 3.11, Limitation of Appointment of Legislators, in line 28 strike out the word "his" and insert in lieu thereof the word "the"; and

In line 29 before the comma insert the following: "for which he was elected or appointed"; and

In line 32 strike out the word "his" and insert in lieu thereof the word "such".

THE PRESIDENT: The Chair now recognizes Delegate

Penniman to present the report S&D-14.

DELEGATE PENNIMAN: This is a distinct pleasure because this is the last report for second reading.

I also want to say to those of you who early in the Convention said I had the dullest job in the Convention, that as a result of the last few days I can assure you this is not true; it is not by any means the dullest job in the Convention.

Let me say this Article IX will be General Provisions, and what we have done is list the items which will appear there. You have approved all of those that are there by name. Only three, then, are here for consideration at this time.

One is Corporation Charters, in which we have in line 11 removed the "and", and in line 12 removed the comma following the word "exist", which was the manner in which the Chairman of the Committee of the Whole had made the suggestion then at the time it was considered by the Committee of the Whole.

There are no further changes at this point in section 9.08, which was originally LB-2. It is

precisely as it came to us from the Committee of the Whole.

In section 9.10, which originally had been GP-10, there are very very slight changes made in election of city officers, judges, et cetera, as indicated by the General Assembly by law, to make it conform with earlier provisions; and in line 27 it says "and" rather than "as well as". Otherwise, no changes were made in GP-10 as approved by the Committee of the Whole.

THE PRESIDENT: Are there any questions of the committee chairman?

Delegate James.

DELEGATE JAMES: I suppose the question I want to ask is one of substance.

THE PRESIDENT: Very well.

Are there any questions of the committee chairman as to matters of style?

Delegate Carson.

DELEGATE CARSON: Mr. Chairman, more of a parliamentary inquiry, or inquiry of fact.

I see that the committee had section 9.11, Lottery, included in General Provisions. What will be

the effect of a vote approving the stylistic changes on General Provisions? Will that also ratify putting that section in that particular place?

THE PRESIDENT: Yes, because the Committee on Style, Drafting and Arrangement has the responsibility of recommending the arrangement of the Constitution, and the placement of this in this article in this fashion is their recommendation to that effect.

DELEGATE CARSON: Could there be an amendment after style amendments are approved with regard to that?

THE PRESIDENT: Not after they are approved. The Chair would permit you to request separate consideration with respect to that section, if that is your desire.

DELEGATE CARSON: I think that would be appropriate, Mr. Chairman.

THE PRESIDENT: Are there any other questions as to style?

Delegate Penniman, again maybe thiswas because once more you were engrossed in other things, I suggested several punctuation changes to staff adviser, Dr. Philips, this morning. Has he had an opportunity to talk to you?

DELEGATE PENNIMAN: He mentioned this had been done, but I have not had opportunity to get them.

THE PRESIDENT: I think I can remember them.

The Chair had suggested that the comma after the word "created" in line 18, and the comma after the word "offered" in line 19 should be eliminated on the ground that the phrase between those two commas is not intended as a parenthetical phrase, but rather as modifying "granted and created," so it would read "in all charters heretofore granted and created subject to repeal or modification.

I incorrectly stated that in that the second comma would not be the one after "offered", but would be the one after "modification".

Do you follow me, Delegate Penniman?

DELEGATE PENNIMAN: Yes, I do.

THE PRESIDENT: Is Delegate Gallagher here? I don't want to tie up the Convention.

Delegate Penniman, I understand Delegate Gallagher indicated he also concurred in deletion of the two commas. Would you concur?

DELEGATE PENNIMAN: Yes, sir.

THE PRESIDENT: Would there be any objection to considering section 9.06 modified so as to delete the comma after the word "created" in line 18, and after the word "modification" in line 19?

Delegate Mentzer.

DELEGATE MENTZER: And lower case the word "banks" in line 21.

THE PRESIDENT: Yes, and to modify by lower casing the letter "b" in the word "banks" in line 21.

The Chair hears no objection. The modifications will be made.

Are there any other questions?

Before putting this to -- Delegate Case.

DELEGATE CASE: Mr. President, may I ask a question about section 9.10?

THE PRESIDENT: Certainly.

DELEGATE CASE: Chairman Penniman, I direct your attention to lines 28 to 31 inclusive on page 3. This sentence bothers me a little, and I am wondering just what the committee means by it.

THE PRESIDENT: I think the question should be directed to Delegate Boyer.

DELEGATE CASE: All right. I will direct it to Delegate Boyer.

THE PRESIDENT: Delegate Boyer, Delegate Case has a question with respect to section 9.10.

DELEGATE CASE: Delegate Boyer, this sentence says, I read it so that you and the members of the Convention can have its full context, "A person tried upon impeachment whether or not convicted shall be liable to criminal prosecution and punishment" -- look at now for deletion -- "shall be liable to criminal prosecution and punishment whether or not convicted."

Doesthis mean that -- I am not sure what it does mean, but conceivably it could mean that a man who was tried upon impeachment, found not guilty, nevertheless would be liable to punishment. What bothers me is the word "shall" in here, and it indicates that perhaps the States Attorney would be required, even though the case was the flimsiest of cases, would be required to file some kind of criminal information against this person, bring him

into court, and punishment might follow.

I can't believe this is what you meant, but it could really be read that way.

THE PRESIDENT: Delegate Boyer.

DELEGATE BOYER: You are absolutely right, sir, and to relieve any question about the case of this matter, the intent is thatthe person tried upon impeachment, whether or not convicted, will still be liable for criminal prosecution and will not be given any immunity because of the fact he had not been convicted of impeachment, immunity, that is, from any criminal prosecution.

THE PRESIDENT: Is it intended that the phrase "shall be liable" would mean may nevertheless be subject to criminal prosecution and punishment? Is that the intent, Delegate Boyer?

DELEGATE BOYER: Yes, that is. The intent is not to grant any immunity for criminal prosecution in the future for anybody who may have been not convicted of impeachment proceedings.

THE PRESIDENT: Not suggesting that precise language as desirable language to use, but would

that meet the point you raised, something like that?

Delegate Case.

DELEGATE CASE: Yes, sir; if you would strike out the words "shall be liable" and say "may nevertheless be subject to criminal prosecution and punishment," then I think you would certainly have it.

THE PRESIDENT: Delegate Penniman, would you have any comment as to that suggestion?

DELEGATE PENNIMAN: I have no objection to it.

THE PRESIDENT: Delegate Mason.

DELEGATE MASON: I would like to ask Chairman Boyer a question.

THE PRESIDENT: As to this same matter?

DELEGATE MASON: Yes, sir.

THE PRESIDENT: Very well.

DELEGATE MASON: Chairman Boyer, are you suggesting that you would not be criminally liable if you were not convicted of impeachment? Is it necessary to put the sentence in there?

THE PRESIDENT: I think that is exactly the reverse of what he said, Delegate Mason.

DELEGATE MASON: My question is, is the sentence necessary?

THE PRESIDENT: Delegate Boyer.

DELEGATE BOYER: Delegate Mason, we think it is, because a person conceivably could be tried for impeachment and under the procedure here enumerated, found not guilty of impeachment, reinstated in his former position of trust, and profit, but that should not negate and circumvent the criminal law of the State, and still would make him liable for criminal prosecution under Article XXVII or whatever may happen there.

I would go with Chairman Penniman to infer that the word "may" would probably clear up the situation, but I do think this sentence is needed in the Constitution.

THE PRESIDENT: As the Chair recalls the earlier discussion, partly before the Committee, on this, Delegate Mason, the sentence was thought desirable to prevent any contention akin to a claim of double jeopardy, for instance, so that one impeached who had been tried upon impeachment and either convicted or not convicted could not be tried for the crime which may have been the basis

of the impeachment.

Delegate Henderson.

DELEGATE HENDERSON: Just along that same line I want to call attention to the fact the very anomolous feature in the Maryland law. It is tried by a panel of judges, and it could be considered a kind of procedure where double jeopardy might apply, so I think it is useful to have this clause in the Constitution.

THE PRESIDENT: Delegate Case.

DELEGATE CASE: Since this is a style amendment, could I move in line 30 that the words "shall be liable" be stricken, and in their place there be inserted the words "may nevertheless be subject"?

THE PRESIDENT: Is there any objection to considering the amendment proposed by Delegate Case, notwithstanding the fact it is not printed?

The Chair hears none. Itwill be Amendment No. 1, to strike from line 30 on page 3 the words "shall be liable" and to substitute in lieu thereof the words "may,nevertheless, be subject".

Is there any further discussion?

Delegate Miller.

DELEGATE B. MILLER: Mr. Chairman, could we possibly not split the verb, firstly?

Secondly --

THE PRESIDENT: Delegate Case, would you modify your amendment to say "nevertheless may be subject"?

DELEGATE CASE: I would be glad to, Mr. President.

THE PRESIDENT: Is there any objection?

If not, the amendment is modified and now reads "nevertheless may be subject".

Any further discussion?

Delegate Penniman.

DELEGATE PENNIMAN: None on that issue, but if I might go back to 9.06 --

THE PRESIDENT: Let's act on this.

DELEGATE PENNIMAN: This is all in one unit.

THE PRESIDENT: The question arises on the adoption of Amendment No. 1, to strike from line 30 on page 3 the words "shall be liable" and insert in lieu thereof the words "nevertheless may be subject."

A vote Aye is a vote in favor of the amendment.

A vote No is a vote against.

Cast your vote.

Has every delegate voted? Does any delegate desire to change his vote?

The Clerk will record the vote.

There being 102 votes in the affirmative and 1 vote in the negative, the motion is carried and the amendment is adopted.

Delegate Penniman.

DELEGATE PENNIMAN: If we can return to 9.06, page 2, line 35, Delegate Gilchrist pointed out we probably do not need a capital A in Act. May we lower case that?

THE PRESIDENT: Is there any objection to considering the committee recommendation modified so in line 35 on page 2 the word Act is put in lower case?

There is no objection. The modification will be made.

Delegate Mentzer.

DELEGATE MENTZER: I believe I found two more. There is "Laws" in line 10 and line 12.

THE PRESIDENT: Yes. The same modification in

line 10, lower case "l" in "Laws"; and in line -- what was the second one, Delegate Mentzer?

DELEGATE MENTZER: Line 12.

THE PRESIDENT: And in line 12.

If there is no objection, the modification will be made.

Delegate Marion.

DELEGATE MARION: While we are working on styling over on the floor I wonder if the meaning of "elected", speaking of section 9.08, Conflict of Interest, whether the meaning of "all elected officials of the State of Maryland" is the same as "elected State officers" in lines 13 and 14 of the section on Impeachment. I suggest if the intention is the same, that in the interest of consistency we say in section 9.08 "for all elected State officers".

THE PRESIDENT: Delegate Penniman.

DELEGATE PENNIMAN: It would appear that the meaning is the same and they should be, therefore, the same words.

THE PRESIDENT: Is there any objection to

considering the amendments proposed by the committee modified so in line 1, page 3, the word "officials" is changed to "officers"?

If there is no objection, the modification will be considered as made.

Any further discussion on these sections?

Delegate Hanson.

DELEGATE HANSON: Mr. President, I have a question for Delegate Boyer relating to section 9.10.

THE PRESIDENT: Delegate Boyer, do you yield to a question?

DELEGATE BOYER: Yes.

THE PRESIDENT: Delegate Hanson.

DELEGATE HANSON: In discussion of section 9.10 in the Committee of the Whole we centered the whole discussion around the trial for impeachment, but in the sentence beginning on line 22 where you state "concurrence of three-fifths of the judges of the Court of Appeals shall be required to convict," was it the intention of your committee that more than a majority of the judges of the tribunal be required in order to obtain conviction?

THE PRESIDENT: Delegate Boyer.

DELEGATE BOYER: No, Delegate Hanson. The intention of the committee was concurrence of three-fifths as it came out of the GP Committee.

THE PRESIDENT: I think the earlier discussion indicated in this situation that majority and three-fifths were the same. I think it was the suggestion that if the number on the panel were ever changed the intent that it be three-fifths shall be indicated.

Am I correct about that, Delegate Boyer?

DELEGATE BOYER: As usual, Professor.

THE PRESIDENT: Delegate Hanson.

Are there any further questions?

Delegate Gill.

DELEGATE GILL: On page 30, provision for all elected officers, is that all elected State officers?

THE PRESIDENT: It says "all elected officers of the State of Maryland."

Your question is what?

DELEGATE GILL: Would you leave it like that, or just say "elected State officers, like you have in line

13?

THE PRESIDENT: Delegate Penniman.

DELEGATE PENNIMAN: This is a question of the intent of the Committee on the Legislative Branch.

THE PRESIDENT: I think Delegate Gill's question is purely one of style. She is asking whether instead of using the term "elected officers of the State of Maryland" you could use the term "elected State officers" to mean the same thing.

DELEGATE PENNIMAN: Yes, of course.

THE PRESIDENT: Do you desire such modification?

DELEGATE PENNIMAN: Yes, I do.

THE PRESIDENT: Is there any objection to modifying the report of the committee on line 1, on page 3, to insert the word "State" before the word officers and to strike all of line 2?

Delegate Winslow.

DELEGATE PENNIMAN: Isn't that possibly a matter of substance?

Could "an officer of the State of Maryland", could that possibly be intended to include more than just

"State officials"?

THE PRESIDENT: Delegate Boyer.

DELEGATE PENNIMAN: It is Delegate Gallagher.

THE PRESIDENT: Sorry.

Delegate Gallagher.

DELEGATE GALLAGHER: I presume you are addressing me with respect to 9.08.

THE PRESIDENT: The question is whether or not in lines 1 and 2 on page 3 the epxression that has been modified to read "elected officers of the State of Maryland" is intended to mean "elected State officers", or whether it could include elected officers in the State who are not officers of the State but of a county, for instance.

DELEGATE GALLAGHER: Mr. President, I believe it was the intention of our committee and the sponsor, Mrs. Miller, the principal sponsor of this, that it would apply to elected State officers rather than all officers who happen to be elected in the State of Maryland.

DELEGATE PENNIMAN: In that case I would accept the proposal of Delegate Gill.

THE PRESIDENT: Very well.

Is there any objection to modifying the recommendation of the Committee by inserting the word "State" before officers in line 1 and striking all of line 2?

Delegate Sollins.

DELEGATE SOLLINS: Mr. President, I object, because the Committee on the Legislative Branch report on this matter very clearly says in its comments that section 3.18 would prevent conflict of interest; establishes the general provision that there should be a code of ethics for all elected officials in the State of Maryland.

I think the intent of the committee was exactly that, and not as has been stated previously.

THE PRESIDENT: The Chair suggests that if that were the intent it was certainly, in the opinion of the Chair, at least, not expressed in the language "elected officials of the State of Maryland".

If that is indeed the intent, I think it is more than a matter of style and there should be an amendment.

Delegate Sollins.

DELEGATE SOLLINS: Mr. Chairman, I will withdraw at this moment.

THE PRESIDENT: Delegate Gallagher.

DELEGATE GALLAGHER: I just conferred with the sponsor who tells me it was her intention that it would be State officers, not officers who happen to be elected anywhere within the State of Maryland.

THE PRESIDENT: Very well.

The amendment is -- the recommendation of the committee as to the amendment is modified as stated, by having line 1 on page 3 read "of interest, for all elected State officers.", and strike out all of line 2.

Delegate Clagett.

DELEGATE CLAGETT: Back to section 9.06, line 21, a point of information:

Could we make a little "b" out of Bank, the first letter?

THE PRESIDENT: It has already been done.

DELEGATE CLAGETT: Did we strike the comma following that?

THE PRESIDENT: No, that was not done.

Delegate Penniman, do you desire to strike the comma after the word "bank" in line 21?

DELEGATE PENNIMAN: I see no objection to dropping it.

THE PRESIDENT: Do you desire to so modify the section?

DELEGATE PENNIMAN: I do.

THE PRESIDENT: In the absence of objection the amendment will be further modified in line 21 on page 2 to strike the comma after the word "banks".

Delegate James raised with the Chair a question as to the intended meaning of section 9.08. Is Delegate Gallagher still in the room? I think it might be worthwhile to clarify with some colloquy.

As I understand it, Delegate James can correct me if I am wrong, there has been under consideration in the legislative council or in the legislature a proposal under which the legislature would provide by law for the creation of a State Board of Ethics, applicable to members of the General Assembly, and would provide further for the implementation of the whole arrangement by the adoption of rules by each house of the General Assembly, and would empower the Board of Ethics to rule upon questions of

conflict of interest at the request of any member of the General Assembly; and would further empower the Board of Ethics so created to adopt regulations, interpretations, and I suppose opinions on questions of ethics or conflicts of interest.

He stated to the Chair that he would suppose that such actions would constitute providing by law for a code of ethics, but raised the question.

The Chair said thatsince the language here is "provide by law for a code of ethics", rather than "prescribe by law a code of ethics", the Chair took it that such an arrangement would be within the contemplation of this section.

But if it is intended that the General Assembly must provide the details of the code of ethics by law, then it would seem to the Chair that the language should be somewaht modified.

Delegate James, have I fairly well stated the problem?

DELEGATE JAMES: That is correct. You have stated it properly.

THE PRESIDENT: Delegate Gallagher.

DELEGATE GALLAGHER: Mr. President, I have seen the proposal of the subcommittee headed by Senator Dorf which is now included in the legislative council package, and in my honest opinion those resolutions, one resolution is for the Senate and one for the House, are not sufficient to comply with this section, because they don't provide for a code of ethics. They simply say we shall be ethical, and the question of whether or not we are ethical shall be decided by a committee of legislators.

THE PRESIDENT: The Chair purposely did not limit what is contemplated to what is presently in the proposal of the legislative council. I understand from Delegate James somewhat broader action was encompassed or thought of.

The question specifically is whether the code of ethics in its details must be prescribed by law or whether the General Assembly may by law provide for the adoption of a code of ethics and an ethics board and so forth.

Delegate James.

DELEGATE JAMES: The specific question is could the General Assembly set up a framework and then provide the details and rules of each house, rather than in the statute? That is the question.

THE PRESIDENT: Delegate Gallagher.

DELEGATE GALLAGHER: Mr. Chairman, I think it was the intention of our committee that the legislature must spell out a code, and consequently the proposal which the legislative council has before it does not go far enough to meet requirements of the conflict of interest section here.

THE PRESIDENT: The Chair would suggest to you and to the Committee on Style that to make this crystal clear an amendment of the first two lines of that section might be desirable.

I would think if this is waht you meant you might say, for instance, the General Assembly shall prescribe by law a code of ethics; if this is literally what you mean then go on and say it and then provide for regulations.

DELEGATE GALLAGHER: That is precisely what the committee intended, Mr. Chairman, and since it is a

rather simple amendment, I would like, if I would be in order, to move it orally here.

THE PRESIDENT: Is there any objection, notwithstanding the fact it is not printed, to consider an amendment which would amend section 9.08 to provide in line 50 -- to strike in line 50 the word "provide" and the word "for" and insert in line 50 the word, in line 50 in lieu of provide, the word "prescribe", and in line 51 insert between the word "and" and the word "for" the word "provide"?

Is this your amendment, Delegate Gallagher?

DELEGATE GALLAGHER: I so move, Mr. Chairman.

THE PRESIDENT: Is there any objection to considering the amendment, notwithstanding the fact it is not printed?

Delegate Gleason.

DELEGATE GLEASON: Mr. President, I have to object until we get a further understanding with respect to the intention of the committee in recommending this provision.

THE PRESIDENT: The Chair is not putting the question now. It is merely a question of whether the amendment can be considered so we can discuss it.

Delegate Gleason.

DELEGATE GLEASON: What I am anxious to do is enter into a little colloquy with the chairman of the committee to try to ascertain and recall to his mind precisely what our discussions were before the committee on the subject, so I have no objection at this time.

THE PRESIDENT: Delegate Gallagher, the Chair suggests you have the amendment prepared at the dinner recess, and we will take it up immediately following the dinner recess.

Are there any other amendments?

We will suspend, then, further consideration of this section.

The Chair has several announcements to make.

Will the pages please distirbute at this time the four papers held by the rubber band marked Journal of Proceedings?

The rules of this Convention indicate that the Journal should be approved by the Convention. The Journal will be approximately 1,000 pages, typewritten pages, in length.

It has been typed. It is in need of extensive editing before it is printed as a permanent part of the record. This is not editing to change any action on it, because I think the staff has now checked, rechecked, and triple checked all the entries, the journal clerk's entries, entries on the President's copy, entries on the parliamentarian's copy, so we think the actions noted are correct.

However, partly because the various proposals when introduced were introduced in such varying forms, there is no uniformity in the method of including in the journal a description of the proposal.

This has resulted in confusion. At least I would hope that this Convention's journal would be a model and that we could vastly improve upon its present text of primarily proposals, and certain other committee actions.

In order to get the journal to you in time we cannot print on both sides because unless we shut down both machines from all other operations, printing on both sides about quadruples the time of producing the journal.

It will be on your desk, I think, the remaining part -- this is just the first installment, I think this

is 169 pages out of 1,000 -- the rest of it I am hoping will be on your desk tomorrow.

I am not suggesting that any delegate read the entire journal. You will see the style of it.

I intend to have presented to the Convention before we adjourn sine die a resolution approving the journal, adopting it as the official journal. It is based upon the records of the journal clerk, of course, but we will authorize the Secretary of the Convention to make editorial changes of the character I have indicated.

This resolution must be carefully worked out. I want you to have the journal so that you will see its style. It is a mammoth job because, of course, every roll call must be included. This means endless repetition of typing names. This involved an enormous amount of checking, and is quite a detailed job.

Normally in the legislature the journal is published eight to nine months after the session is adjourned. I think we can do much better than that, but we do need an approval.

The Chair also has to make another announcement,

with, perhaps, a little bit of red face, I suppose.

I indicated previously our schedule is such that we must remain in session day and night without recess other than for meals and sleeping until we get a final vote.

On the other hand, the President and his wife are very desirous of having the entire Convention and others connected with it as their guests at the reception which all of you have received invitations to on Friday.

It is utterly impossible to make different arrangements with the hotel. We have no other place where we have sufficient room. It cannot be held off. I shall have to, therefore, ask your indulgence that if we have not reached a final vote by shortly before 6:00 p.m. on Friday evening, that we would nevertheless recess at about that hour so that you can be guests of my wife and myself that evening, and I would not anticipate that we would be returning for further discussions that evening, but instead would return the next morning.

I also want to take this opportunity to correct what may be a serious misapprehension concerning a statement I made in reply to a question I think from Delegate

Macdonald, but I am not sure, as to amendments on third reading. I was asked whether amendments on third reading would be in order. I said, unfortunately, yes. I don't mean that it was unfortunate that I answered that way, because that is the answer. However, that had been construed by some delegates to mean that any and all kinds of amendments would be in order.

This is very definitely not the case. The only amendments which would be in order on third reading would be amendments which would be germane to the matter before you on third reading.

It would not be possible, for instance -- I have been asked this precise question -- to offer an amendment that would put in a new section or even a section that had been reconsidered or considered by some committee, or had been not accepted on second reading, because any amendments, any new matter of that character under the Conventionrules would have to come in as proposals and run the whole gammut of procedure prescribed by rules. That is, be referred to committee, go through first, second and third readings.

Therefore, while amendments on third reading are in order, this is a very narrow filed. I serve warning that the Chair, unless overruled by the Convention, would intend to apply the rule as to whether an amendment was germane with strictness rather than with great latitude. So that the time to make amendments to have them considered is on second reading, or now. It is not on third reading.

I did not want anybody to be under the apprehension that some entirely new matter could be considered for the first time on third reading.

Are there any announcements necessary to be made by the committee chairmen? Are there any announcements by other delegates?

Any delegates present now not present on earlier roll call may indicate their presence on supplemental roll call.

Delegate Boileau is present.

The clerk will record the supplemental roll call.

I have just been handed a note that disturbs me. It says, "Are you aware that some delegates did not

receive their invitations for the party Friday?"

I was not aware of this. Every delegate should have received, if he was here, received in person from the page an invitation several days ago at least -- more than that -- and if he was absent, mailed to his home.

If any delegates did not receive the invitation, will you nevertheless please consider that you have received it, because it was sent to you, and advise me whether you are able to accept.

Every delegate, without exception, and his or her wife has been invited.

That shows the Chair is really getting tired -- his or her spouse. (Laughter.)

THE PRESIDENT: Any other announcements?

One other comment: We will, of course, meet tonight. We will start on transitional provisions.

We will have a session tomorrow morning, tomorrow afternoon, tomorrow night, Friday morning, and Friday afternoon.

Delegate Powers.

DELEGATE POWERS: Mr. President, I move we recess until 8 o'clock.

THE PRESIDENT: All in favor, signify by saying Aye; contrary, No.

The Ayes have it. It is so ordered.

(Whereupon, at 6:30 p.m., the Convention adjourned, to reconvene at 8:00 p.m. of the same evening.)

EVENING SESSION

January 3, 1968 - 8:25 p.m.

THE PRESIDENT: The Convention will please come to order.

Roll call.

(Whereupon, the roll was called.)

THE PRESIDENT: Has every delegate answered roll call?

The clerk will indicate the presence of Delegate Boileau and record the roll call.

There being a quorum present, the Convention is in session.

Pages will please distribute Amendment B, "b" for "baker".

Delegate Gallagher.

We will resume consideration of Committee Recommendations LB-2, 3, and GP-10.

I understand, Delegate Gallagher, that you have prepared the amendment tosection 9.08 that was being discussed before the dinner recess, but it is not yet printed. Will you please state the amendment so

that we can get uanimous consent to consider it, notwithstanding the fact that it is not printed?

DELEGATE GALLAGHER: In section 9.08, Conflict of Ihterest, on page 2 of the provisions before us of Article IX, on line 50 strike out the word "provide" and substitute therefor the word "prescribe"; and on line 51 after the word "the" -- pardon me, after the word "and" insert the word "provide".

THE PRESIDENT: Delegate Gallagher, I think you also have to strike out of line 50 the word "for," do you not?

DELEGATE GALLAGHER: Yes, sir. It would read "The General Assembly shall prescribe by law a code of ethics and provide for the regulation of conflict of interest."

THE PRESIDENT: Is there any objection to considering the amendment, notiwthstanding the fact that it is not printed?

The Chair hears no objection. This will be Amendment 2. The clerk will read the amendment, Amendment No. 2.

MR. QUILLEN: Amendment No. 2 to Committee Recommendations Nos. LB-2, LB-3, and GP-10 as amended by Report No. SaE-14, by Delegates Gallagher and B. Miller:

On page 2, Section 9.08, Conflict of Interest, in line 50 strike out the word "provide" and insert in lieu thereof the word "prescribe";
and in line 51 after the word "and" insert the word "provide".

THE PRESIDENT: The amendment is submitted by Delegate Gallagher.

Is there a second?

The amendment is seconded. The Chair recognizes Delegate Gallagher.

DELEGATE GALLAGHER: Mr. President and ladies and gentlemen. We discussed these changes before dinner tonight. It is the intention of the Committee on the Legislative Branch that the General Assembly shall prepare a code, a specific code of ethics, and at the same time we don't mean to preclude the possibility that it will establish some board or agency to administer this

code of ethics. And further, we go on to provide that the General Assembly shall also provide for the regulation of conflicts of interest.

This more closely approximates and is identical to the original intention of the Committee which we debated at some length here. There was a difference of opinion which was resolved by a vote, and I would urge the adoption of this amendment.

THE PRESIDENT: Delegate Gallagher, the Chair has just noted the absence of Delegate James. I have sent a messenger to telephone his office.

Would it be agreeable to you to pass over this amendment for the time being, until we can find him?

DELEGATE GALLAGHER: Yes, sir.

THE PRESIDENT: Delegate Gallagher, you have another amendment, I believe, in section 9.06.

DELEGATE GALLAGHER: Yes, sir.

Delegates Case, Henderson and Sherbow join with me in this amendment.

THE PRESIDENT: Can you state the amendment?

DELEGATE GALLAGHER: Yes, sir, I can.

In the provisions which we have before us, Article IX, General Provsiions, on page 2, section 9.08 entitled Corporation Charters, on line 34 after the word "may" insert the words "now or", so that line 34 will read "that may now or hereafter be granted or conferred".

THE PRESIDENT: The Chair is almost certain that the Committee on Style would want to change that around so that it would read "that are now or may hereafter".

Would there be any objection on your part to stating it that way?

DELEGATE GALLAGHER: Mr. Chairman, at this hour I am totally agreeable.

THE PRESIDENT: Delegate Penniman, I don't know that you were following the proposed amendment. Delegate Gallagher suggests that on page 2 in line 34 after the word "may" that he would like to add the words "now or". I suggested to him that your committee would probably change that to be "that are now or may be hereafter". Can you direct your attention to this for a moment?

DELEGATE PENNIMAN: I will, yes, indeed.

THE PRESIDENT: Would you prefer that to saying "may now or hereafter"?

DELEGATE PENNIMAN: I could say that I have no preference whatever.

THE PRESIDENT: Delegate Gallagher, would you come to the rescue of the Chair and indicate if you have a preference?

DELEGATE GALLAGHER: Only last night I was using Fowler's Dictionary of English Usage, and I think that that would be useful.

THE PRESIDENT: Delegate Gallagher presents an amendment to add after the word "that" the words "are now" -- no, the words "are now or". Is there any objection to considering the amendment, notwithstanding the fact that it is not printed?

The Chair hears none.

Delegate Penniman.

DELEGATE PENNIMAN: Mr. President, my committee has just informed me that I very seldom speak for the committee, in any case, on this matter. (Laughter.)

THE PRESIDENT: Delegate Gallagher, do you desire to speak to the amendment?

DELEGATE GALLAGHER: Mr. President, just briefly: In examining this section, if you will begin with line 31, I think you will see the significance of the addition "and any corporation chartered by this State which shall accept, use, enjoy or in any way avail itself of any rights, privileges, or advantages that are now or hereafter may be granted or conferred by any special act shall be exclusively presumed to have thereby surrendered any exemption from taxation". The purpose of adding these words, should the B&O Railroad as part of passing avail itself of merging with the Chesapeake & Ohio, that that action shall be construed under this particular clause to be tantamount to the surrender of its exemption.

If we allowed the language to stand as it was, talking about privileges that may hereafter be granted, we may run into difficulty, because the right to merge is not a right that may hereafter be granted by the General Assembly; it is a right which presently

exists by virtue of the provisions of Article XXIII of the Annotated Code of Maryland.

Consequently, in order to pick up any time lag there we want to have it specifically set forth here that should the B&O Railroad seek to merge immediately after the passage of the Constitutional Convention, that this act shall be considered to be tantamount to accepting a benefit now existing, and therefore shall amount to the surrender of the tax exemption.

THE PRESIDENT: Delegate Gleason.

DELEGATE GLEASON: I would like to ask the chairman of the committee a question, if I may.

THE PRESIDENT: Delegate Gallagher, will you yield to a question?

DELEGATE GALLAGHER: Yes, sir.

THE PRESIDENT: Delegate Gleason.

DELEGATE GLEASON: Do I understand then that the intent of the amendment is to place an obstacle, if we can use that in a rather general sense, an obstacle in the face of the merger of the B&O and the other railroad, which would have the effect that if the corporate

officials of both railroads go ahead and decide to merge their railroads and they get the approval of the Interstate Commerce Commission, thereafter they shall have lost their tax exemption?

THE PRESIDENT: Delegate Gallagher.

DELEGATE GALLAGHER: No.

The purpose of it is merely to put the B&O and all corporations similarly situated upon the passage of this Constitution as existed prior to the passage of this Constitution.

The B&O and C&O have already agreed to merge. They have yet to take the formal steps in Maryland in order to accomplish the merger, so we are not attempting to stand in the way of the merger. But we want the same legal effect to take place if they do so under this Constitution that would have taken place had they done so under the 1867 Constitution.

The reason why I suggest the language is this: that when this particular section was passed in 1891 we had not as yet passed the section of law setting up the State Department of Assessments and Taxation, which I

think occurred in 1910. A general law set up this corporation article. Any corporation, therefore, after 1891, particularly beginning with 1910, which sought to go the route of merging itself with another corporation would do so by virtue of Article XXIII, a general law, and this was a law which was passed after 1891. It was a general law which was thereafter in the sense of looking forward prospectively from 1891.

Now, what we seek to do here is to merely pick up the fact that there has been a general law which has been passed which the B&O actually might take advantage of if it decides to carry out its contractual agreement to merge, and we want the same legal affect to flow, that is to say, the surrender of its taxation exemption, which would have occurred under the 1867 Constitution.

THE PRESIDENT: Delegate Gleason.

DELEGATE GLEASON: It is precisely this point that bothers me, because it seems to me that we are dealing here with a legislative matter, and maybe I could make my question more specific:

Is there anything in this amendment which

if it is adopted would preclude the General Assembly, if this merger does take effect -- and I know absolutely nothing about the merger -- if it does take effect, from granting or continuing a tax exemption for the B&O or the new corporate enterprise, whichever form it may take?

THE PRESIDENT: Delegate Gallagher.

DELEGATE GALLAGHER: There is no more disability upon the General Assembly to grant a tax exemption than existed prior to the passage of this Constitution. I am not so sure that such a grant might not be discriminatory and illegal under our present Constitution and laws, but I want to stress only the fact that anything the General Assembly could do prior to the passage of this Constitution it can do after its passage, and the only purpose of this amendment is to keep the situation in the same condition as existed prior to the passage of the Constitution.

THE PRESIDENT: Delegate Gleason.

DELEGATE GLEASON: Then I really question your prior answer, because I take it that if this amendment is

adopted, if the B&O decides to merge with this railroad, then they have lost their tax exemption?

THE PRESIDENT: Delegate Gallagher.

DELEGATE GALLAGHER: The B&O has already decided to merge upon the completion of the formality of filing articles of merger, and it shall have lost the tax exemption at that time. That is the situation under the present law, even if this provision and Constitution is never passed. That same situation, hopefully, will occur after the passage of this Constitution, because it is designed to achieve the same effect.

THE PRESIDENT: Delegate Gleason, Delegate Gallagher's time has expired. Do you have a further question?

DELEGATE GLEASON: I want to raise a further question.

A law can be changed, but a Constitutional provision is a different thing, and it is this aspect that bothers me.

THE PRESIDENT: Delegate Gallagher.

DELEGATE GALLAGHER: Well, just a brief review: The B&O got this exemption by virtue of an 1826 charter grant, and the General Assembly has been trying to put the B&O back in the same status with all other corporations of like character since 1851.

The Constitutions of 1851, 1864 and 1867 had provisions to accomplish the identical result, except the last sentence was added in 1891 by Constitutional amendment.

All we do here is keep the gain and the legal rights, responsibilities and privileges on both sides after the passing of the Constitutional amendment as it existed prior to the passage.

THE PRESIDENT: Any further discussion?

Delegate Chabot.

DELEGATE CHABOT: Mr. Chairman, would it be in order for me to ask another question of Delegate Gallagher?

THE PRESIDENT: Delegate Gallagher's time has expired. Is it justone question?

DELEGATE CHABOT: I hope it is one question.

THE PRESIDENT: Delegate Gallagher, do you yield for one more question?

DELEGATE GALLAGHER: Yes, sir.

THE PRESIDENT: Delegate Chabot.

DELEGATE CHABOT: When this amendment was originally enacted that any right, privilege or advantage that may have been granted before that date could nevertheless be taken advantage of by the B&O, now, if we are intending to preserve the same situation, I wonder whether or not we are in the position now of saying that a right granted by a pre-1891 statute, the exercise of such a right which would not have caused them to lose the tax exemption before this provision, would now cause them to lose the tax exemption?

DELEGATE GALLAGHER: I would say we have just as much a right to do so in 1968 as the people had in 1891 when they added the grandfather clause, and you take advantage of the privileges, the doing of that act constitutes a surrender of the tax exemption. The state does not force the B&O to do it. They say if you do, this is the price. The B&O has decided to. We are not interfering with the contractual obligation. We are sayingwhat has been agreed

upon if formalized, will result in the same loss of exemption that would have occurred under the present Constitution.

THE PRESIDENT: All of this discussion is a repetition of the very full discussion that occurred in the Committee of the Whole, and the questions indicate that we are losing sight completely of the history that was given by the committee chairman, by Delegate Henderson and others at that time.

The significant thing is that the present Constitutional provision grows out of the so=called settlement act of 1890 which was a compromise agreed upon by the Baltimore and Ohio Railroad, and the State of Maryland, and embodied in the legislation and the Constitutional provision. All that the section seeks to do is to continue the effect of that act as embodied in the Constitution of 1867. The amendment that is suggested now, amendment No. 3, in no way alters this situation, it merely is continuing the same effect, the additional words are necessary simply because when you say hereafter in a Constitution in 1967 you mean after 1967, whereas the intent

is that it is after a much earlier date.

Is there any further discussion?

Delegate Chabot.

DELEGATE CHABOT: I will make it in the form of a statement, not a question, since I promised to ask only one question. However, in 1891 what the State did was to say not that if you take advantage of any of the corporate laws, but only if you take advantage of new grants or new privileges or advantages, those granted after December 3, 1891. If you take advantage of old privileges which you may have had before, but had never taken advantage of, you are still protected.

With this language we have made a change in that. If the matter is not consid ered important by the Chairman of the committee, I will not press it any further, but I will insist that we are making a change by the addition of these words.

We are not putting things precisely as they are in the present Constitution, and I think it is wrong to state that we are doing it when in fact we are not.

THE PRESIDENT: Any further discussion?

Delegate Harry Taylor.

DELEGATE H. TAYLOR: Mr. President, would it be in order for me to move the previous question?

THE PRESIDENT: It would.

DELEGATE H. TAYLOR: Then I do.

THE PRESIDENT: Is there a second?

(The motion was duly seconded)

THE PRESIDENT: The question arises on the motion to order the previous questionon the adoption of amendent 3. All in favor signify by saying Aye. Contrary No. The Ayes seem to have it. The ayes have it, and it is so ordered.

The question arises on the adoption of amendment No. 3. Amendment No. 3 not yet printed, is to amend section 9.06 by adding in line 34, after the word "that", the words "are now or". A vote Aye is a vote in favor of the amendment. A vote No is a vote against.

Cast your vote.

Has every delegate vored? Does any delegate desire to change his vote?

The Clerk will record the vote.

There being 92 votes in the affirmative, and five in the negative, the motion is carried and the amendment is adopted.

Delegate Gallagher, we have been unable to locate Delegate James.

This is the last thing under this article. I think we will have to return to amendment No. 2.

DELEGATE GALLAGHER: I think there has been a good deal of discussion heretofore. I won't impose myself further upon the Convention. The object of the committee, I think, is quite obvious. We debated this thing, we had a heated and spirited debate, and it was decided we should have this particular section.

I think that it will be a valuable addition to the Constitution. I urge the adoption of the amendment.

THE PRESIDENT: Is there any further discussion? It is amendment No. 2, the amendment to section 9.08, the amendment not yet printed, would amend section 9.08 by striking from line 50 on page 2 the word "provide", and substituting the word "prescribe", striking the word "for" in the same line, and in line 51, after the word "and"

insert the word "provide", so that the two lines, 50 and 51, as amended would read "the General Assembly shall prescribe by law a code of ethics and provide for the regulation of conflicts."

Delegate Gleason.

DELEGATE GLEASON: Mr. Chairman, I have a question of the Chairman of the committee.

THE PRESIDENT: Delegate Gallagher, do you yield to a question?

DELEGATE GALLAGHER: Yes, sir.

THE PRESIDENT: Delegate Gleason.

DELEGATE GLEASON: Delegate Gallagher, as I read this, it states the General Assembly shall prescribe by law a code of ethics. As I understand that phraseology, it means that they shall write out in the Alpha to Omega language what that code of ethics stands for, or is it adequate for the purpose of this section for them to provide the standards of the code of ethics, or just what is contemplated?

DELEGATE GALLAGHER: This section, I suggest, contemplates a statement, an actual setting forth of what

shall consist of either ethical or unethical conduct.

THE PRESIDENT: Do you have a further question, Delegate Gleason.

DELEGATE GLEASON: Carrying on Senator James' battle in his absence, as I understand his point, I think it was well taken, the Legislative Council has a bill in the hopper leaving out its provisions with respect to the rules of both bodies of the legislature, the establishment of a board which will have, as I understand it, the policing power of making sure that this ethical standard is maintained, and adhered to. Is this contemplated within the first part of this provision -- the difficulty that Ihave is I can't see how a legislative body can sit down and write, with language a code of ethics that will become kind of penal in character. They can do it with a conflict of interest staute, I have no problem there, but how do you do it across the broad breadth of elected state officials in Maryland?

THE PRESIDENT: Delegate Gallagher.

DELEGATE GALLAGHER: Ithink the General Assembly has gone part of the way when it sets up a committee

in each branch of the General Assembly to police ethical conduct. I don't think it has gone far enough, however, because it has not stated what does constitute specifically by way of action or interest or non-disclosure as the case may be, the acts or the items which either are considered to be ethical conduct, or unethical conduct, so specifically, I would say that the General Assembly has begun to comply with this conflict of interest provision, but has not yet fully done so.

THE PRESIDENT: Delegate Gallagher.

Delegate Gleason, could I interrupt your question to suggest a question that I think might clarify it?

If I understand your previous answers, you are suggesting that the purpose of the amendment is to make it clear that the General Assembly by law shall prescribe a code of ethics which would be analogous in style, at least, to say the canons of ethics adopted by the American Bar Association with respect to lawyers or the canons of judicial ethics, adopted with respect to judges, statements of proper and improper conduct, but that it is also

contemplated that the General Assembly, by law, provide for an ethics board, for instance, to render interpretative decisions, or to decide questions of doubt as to whether particular conduct is or is not a violation of the canons or even to issue regulations to enforce the code of ethics; is this in essence what is contemplated?

DELEGATE GALLAGHER: Yes, sir. I believe that is an accurate description.

I should say further when the General Assembly sets up an ethics committee in each of the houses of the General Assembly for itself, it is only covering some of the elected officials, namely, themselves, and not all state-elected officials.

THE PRESIDENT: Delegate Gleason, do you have any further question?

DELEGATE GLEASON: My only concern, Mr. President -- and I say this to the Chairman -- I just can't visualize myself having looked over rather carefully in the past federal statutes, and conflict of interest, how a a statute handles this problem. I presume there is some method that this can be done, and I supported this particular

provision in the committee, and I support it on the floor, and I am anxious that it not be watered down myself, but you know there is just a minimum standard that a General Assembly could meet to meet that standard, and I think we may be hurting ourselves rather than helping ourselves, and that is the reason I raised the question.

THE PRESIDENT: Delegate Boyles.

DELEGATE BOYLES: I would like to ask Chairman Gallagher a question, please, if I may.

THE PRESIDENT: Delegate Gallagher, do you yield to a question?

DELEGATE GALLAGHER: Yes, sir.

THE PRESIDENT: Delegate Boyles.

DELEGATE BOYLES: Is the intent of this section to provide a code of ethics for State officials and regulation of conflict of interest for elected officials, or would both the code of ethics and regulations of conflicts apply only to elected state officials, not appointed?

THE PRESIDENT: Delegate Gallagher.

DELEGATE GALLAGHER: Your latter phrase is

correct. Both of these sections apply only to elected officials of the State of Maryland.

Imight say that part of the recommendations made by Senator Dorsey's subcommittee of which these rules both applying to the House and Senate have been referred to, it also covers conflict of interest for employees of the executive department.

So there has been some attention already paid to another branch of the government.

THE PRESIDENT: Delegate Bennett, do you desire to be heard?

DELEGATE BENNETT: Well, Mr. President, in essence, Mr. Gallagher has answered my question. I was wondering whether this should apply only to elected officials and whether appointed officials should not be included in this, and we knock out the word "elected". You will remember, Mr. Gallagher, under the Kefauver code of ethics an appointed official could accept a ten-pound ham, but he couldn't accept a 12-pound ham. Don't you think that this code of ethics and conflict of interest could tackle that problem?

THE PRESIDENT: Delegate Gallagher.

DELEGATE GALLAGHER: I would think the question of distinction of conflicts between pounds of ham could best be left to somebody, some commission which could consider this, and arrive at a just decision.

I certainly wouldn't want to try to legislate with particularity on these problems. I am sure Senator James and the other members of the General Assembly can meet the ham problem head on.

THE PRESIDENT: Delegate James.

DELEGATE JAMES: I didn't have very many hams this Christmas.

I heard a speech by the Governor of Kentucky not too long ago, and he said he noticed he had much more ham in his first year, than he did in his last.

THE PRESIDENT: Delegate Pullen.

DELEGATE PULLEN: Mr. President, some 40 yeras ago my friend, Delegate Cleveland, gave a commencement address to thehigh school ofwhich I was principal. The topic of his address was common sense and common decency.

Now, Mr. Chairman, I was reproved some two

years ago by a member of the legal profession in respect to ethics, and he said that if we had more education we would have better ethics.

He was indicted three months later for stealing $100,000.

Mr. Chairman, after nearly five-score years and ten of living, I have learned one thing, which is that the most futile thing one can do is to tell a man that he has neither good manners nor a sense of propriety. I doubt very much that all of this belongs very much in the Constitution, that we are proposing for the citizens of Maryland

THE PRESIDENT: Delegate Bamberger.

DELEGATE BAMBERGER: Mr. Chairman, I would ask Delegate Gallagher if he would consider modifying his amendment not to add the word "provide" on line 51. It seems to me that it more nearly expresses the intent of the committee if it provides that the General Assembly shall prescribe by law for the code of ethics, and for the regulation of the conflicts of interest. Certainly under that they could establish a board which I understand

was the reason for using the word "provide" in line 51.

THE PRESIDENT: Delegate Bamberger, the word "for" in line 50 has been stricken by the amendment. Delegate Bamberger, he said you didn't realize the word "or" was stricken.

DELEGATE BAMBERGER: If you omit ---

DELEGATE GALLAGHER: As I understand it, at the moment we are saying the General Assembly shall prescribe for a code of ethics, and provide for the regulation of conflicts in interest. I think that is the way it reads, exactly.

Mr. Bamberger is suggesting rather than say "provide for conflict of interest" that we say "prescribe for the regulation of conflicts of interest."

I think we would probably have to drop out the "for" on line 51 if we pick up "prescribe". I have no objection to it.

THE PRESIDENT: Amendment 2 as modified reads as follows: On page 2, section 9.08, Conflict of Interest. in line 50 strike ut the word "provide" and insert in lieu thereof the word "prescribe", and strike out the word

"for" in line 50, and in line 51 after the word "and" insert the word "provide".

Now do you wish to further modify it?

DELEGATE GALLAGHER: Mr. President, I think perhaps if we drop out "provide" in line 51, so that the sentence would read "The General Assembly shall prescribe by law a code of ethics and for the regulation of conflicts of interest," wouldn't that accomplish what Mr. Bamberger suggested?

THE PRESIDENT: It would, but to me gramatically it is a very awkward sentence.

Delegate Bamberger.

DELEGATE BAMBERGER: Mr. President, the modification which I suggest, those lines would read as follows: "The General Assembly shall prescribe by law a code of ethics and shall prescribe by law for the regulation of conflicts --".

THE PRESIDENT: Did you respond to that Delegate Gallagher?

DELEGATE GALLAGHER: Mr. President, again I think it is awkward. I think we could accomplish what we

would intend to by sticking with "provide". I don't want to get into a federal case about it.

THE PRESIDENT: Delegate Henderson.

DELEGATE HENDERSON: I was just going to say what Mr. Gallagher said. The "prescribe" requires that the legislature write a code in the first instance, and they can regulate the second and provide for a regulation in any manner that they please.

I think that is exactly right, and it should stay the way it is.

THE PRESIDENT: Any further discussion?

DELEGATE SOLLINS: I would like to move the previous question.

THE PRESIDENT: The question arises on the motion to move the previous question.

All those in favor signify by saying Aye. Contrary No. The Ayes have it, and it is so ordered.

The question arises on the adoption of amendment 2 as modified. It is the amendment as you have it printed except in line 3, add a semi-colon, and add the word "for" in line 50.

A vote Aye is a vote in favor of the amendment. A vote No is a vote against.

Cast your votes.

Has every delegate voted? Does any delegate desire to change his vote?

The Clerk will record the vote.

There being 87 votes in the affirmative, and 9 in the negative, the motion is carried, and the amendment is adopted.

Amendment No. 3, on which you have acted, has now been distributed by the pages. It is amendment "D" for "dog". Please correct your copy so that in line 2 the word "they" is stricken, and insert the word "that", and beginning in line 3 before the word "now" insert the word "are".

Delegate Sollins.

DELEGATE SOLLINS: I have an amendment, lettered "A".

THE PRESIDENT: Did you give your amendment to Mr. Benson, Delegate Sollins?

DELAGATE SOLLINS: I have had a printed copy

for some time, and I assumed it was available for distribution.

THE PRESIDENT: Will you send your copy to the Chair? Will the page get the copy from Delegate Sollins, please?

While we are waiting to find the amendment, Delegate Penniman, may I have your attention for a moment?

One of the delegates has passed to the Chair a note suggesting the possibility that the caption of section 9.08 be modified to show that it covers two relatively distinct things. I rather suspect this was considered by your committee. Can you tell me whether that was so?

DELEGATE PENNIMAN: Mr. President, there are a number of these which arenot fully descriptive, but it is in general our policy to hold them rather brief, so it seems to me that a conflict of interest is sufficient for this.

THE PRESIDENT: Very well.

This will be amendment 4. The Clerk will read the amendment.

MR. QUILLEN: Amendment No. 4 to committee recommendation No. LB-2, LB-3, GP-10, as amended by report No. S&D-14, by Delegate Sollins:

On page 3 Section9.10 Impeachment in line 17 after the period add this new sentence:

"If the House is not in session, the presiding officer, upon the written request of three-fifths of all the members of the House, shall convene the House for consideration of impeachment only."

THE PRESIDENT: The amendment is submitted by Delegate Sollins.

Is there a second?

Delegate Bamberger seconds the amendment.

The Chair recognizes Delegate Sollins to speak to the amendment.

DELEGATE SOLLINS: I think it very safe to characterize this amendment as one of the less significant ones that this Convention is going to hear about.

However, I think it is a necessary one when we were discussing S&D-16, LB-2 and LB-3 and GP-13, that it is not possible for the House of Delegates to get into

session if they wanted to consid er an mpeachment proceeding and in order to meet this gap, this amendment is suggested to be added to the impeachment section.

This will provide that the House of Delegates by itself, with three-fifths of the members acquiescing can call itself into session for consideration of impeachment. This would not require the Governor to do it. It would not require the concurrence of both Houses.

I urge your support of it.

THE PRESIDENT: Delegate Boyer, do you have a comment?

DELEGATE BOYER: Yes, I completely concur with Delegate Sollins that this is an insignificant amendment, and I therefore urge that it be rejected.

It occurs to me,there have been , it occurs to me, either one or two impeachment proceedings, if that, in the last 100 years in the State of Maryland. I don't think that this is necessary. At the very most, it would only be a lapse of nine months from the time that a legislature would adjourn until it again reconvenes.

I can conceive of no immediate problem that

could arise if none has arisen in the last hundred years like this where we would have to clutter up a Constitution by an amendment as this. I can see no thrust, no impact, no need for it, and I suggest that it be defeated.

THE PRESIDENT: Delegate Clark.

DELEGATE JAMES CLARK: I rise to support Delegate Sollins' amendment. I think it makes a great deal of sense. You might have the situation where it might be the Governor that needed impeaching, and you could hardly expect him to call a special session for that purpose, therefore I think this amendment has great merit, and although it may never be needed, I hope it will never be needed in the State of Maryland, if we need it, it will be there. Therefore I hope you will vote for it.

THE PRESIDENT: Any other discussion?

Delegate Gleason.

DELEGATE GLEASON: May I ask a question of the sponsor of the amendment?

THE PRESIDENT: Delegate Sollins, do you yield to a question?

DELEGATE SOLLINS: Yes, sir.

THE PRESIDENT: Delegate Gleason.

DELEGATE GLEASON: This question borders on the technical side of things, but it has always been my impression that really the House is not in session unless the Assembly is in session. I think there is a great deal of merit in this proposal because certainly if charges of impeachment or cries for impeachment have been raised, it is in the interest of the person accused to have this matter handled expeditiously, and therefore Ithink the House should have the power to call themselves into session,since we have given them this power of bringing forth the bill of impeachment, but I am wondering if you would change this first sentence to say if the General Assembly is not in session, to keep it consistent with the fact that the Assembly, after all, is the legislative body as such, and that is the one that should be in session.

THE PRESIDENT: Delegate Gleason and Delegate Sollins, the Chair calls your attention to the fact that there is provision for the separate session of the Senate only. It would be impossible for the Senate

to be in session and the House not to be in session.

Delegate Gleason.

DELEGATE GLEASON: We are doing some strange things in this Convention, and I sit down, Mr. President.

THE PRESIDENT: Delegate Boyles.

DELEGATE BOYLES: I would like to speak to this amendment.

I suggest to this Convention that it might be a very good idea not to put this amendment into the Constitution for the following reason:

As Delegate Boyer said, only nine months could possibly elapse between the time that the House is in session. It might just be that that is the time necessary to cool off some hotheads who might otherwise try to impeach a man who should probably not have been tried, as President Johnson was at one time.

Thank you.

THE PRESIDENT: Any further discussion?

Are you ready for the question? The Clerk will ring the quorum bell.

The question arises upon the adoption of

amendment No. 4. A vote Aye is a vote in favor of the amendment. A vote No is a vote against.

[illegible] your votes.

[illegible]

[illegible] Boileau.

DELEGATE BOILEAU: Aye.

THE PRESIDENT: Delegate Boileau votes [illegible]. Does any delegate desire to change his vote? The Clerk will record the vote.

There being 45 votes in the affirmative and 63 in the negative, the motion is lost, and the amendment is rejected.

Are there any other amendments to committee recommendation LB-2 and -3, and GP-10?

Delegate Pullen.

DELEGATE PULLEN: Mr. President, I rise to a point of personal privilege.

THE PRESIDENT: State the privilege.

DELEGATE PULLEN: As the grandson, son, and nephew of two Methodist preachers, I should like the Convention to join me in welcoming the charming wife of

the future Bishop of the Methodist Episcopal Church, Right Reverend Bruce Priest, in the balcony over the podium. She is the mother of four children, the latest six weeks old - Simon. (Applause)

THE PRESIDENT: The question now arises upon the adoption of second reading of committee recommendation LB-2 and -3, and GP-10, to the extent printed as an attachment to the report of the Committee on Style, Drafting and Arrangement No. S&D-14, as amended.

The Chair's attention is called to the fact that the Convention has not yet concurred in the recommendations made by the Committee on Style.

The question arises upon the adoption of the amendments recommended by the Committee on Style with respect to the sections of LB-2,LB-3 and GP-10 included in the attachment of the report of the Committee on Style, Drafting and Arrangement in Report S&D-14.

A vote Aye is a vote in favor of the amendments, and a vote No is a vote against.

Cast your votes.

Has every delegate voted? Does any delegate

desire to change his vote?

The Clerk will record the vote.

There being 105 votes in the affirmative and 2 in the negative, the amendments proposed by the Committee on Style are adopted.

The question now arises upon the adoption on second reading of the sections of committee recommendation LB-2, LB-3 and GP-10 included in the attachment of the report of the Committee on Style, Drafting and Arrangement, S&D-14 as amended.

A vote Aye is a vote in favor of the adoption of the recommendations as amended. A vote No is a vote against.

Cast your votes.

Has every delegate voted? Does any delegate desire to change his vote?

The Clerk will record the vote.

There being 101 votes in the affirmative and 3 in the negative, the motion is carried. The sections of the committee recommendation LB-2, -3, and GP-10 included in the attachment to the report No. S&D-14 as amended, are

approved and adopted on second reading.

The report and the recommendations as amended are referred to the Committee on Style, Drafting and Arrangement.

The next item on the calendar isItem 7-C, which was a reconsideration of the vote by which Committee Report No. S&D-11 was adopted in order to reconsider the vote by which amendment No. 2 to Committee recommendation S&E-1 and S&E-2 was adopted. The Chair has been advised by the Chairman of the Committee on Suffrage and Elections that she does not desire to offer that particular motion but she does desire to move a suspension of the rules, a suspension of whatever applicable rules would prevent consideration of an amendment to section 2.01 as adopted on second reading.

Will the pages please distribute amendment J. J for jig.

This will be amendment No. 10. The Clerk will read the amendment.

MR. QUILLEN: No. 10, by Delegates Koss and others.

On page 1, Section 2.01. Voters in National, State, and County Elections.

in line 19 after the period add this new sentence:

"If any county is divided to form portions of different electoral districts for the election of any national, state or county officer, then, to entitle a person to vote for such an officer, the person shall have been a resident of that electoral district for three months next preceding the election.";

And in lines 22, 23 and 25 respectively in each instance strike out the word "county" and insert in lieu thereof respectively in each instance the words "electoral district".

THE PRESIDENT: The amendment is submitted by Delegate Koss and seconded by the co-sponsors.

The Chair recognizes Delegate Koss to move the suspension of rules.

DELEGATE KOSS: Mr. Chairman, I so move.

THE PRESIDENT: The question arises on the motion to suspend the rules, suspend interfering rules to permit the consideration of amendment 10 to amend Section 2.01 as

adopted on second reading.

Is there a second to the motion.

(The motion was duly seconded)

THE PRESIDENT: The motion is seconded. A vote Aye is a votein favor of suspension. A vote No is a vote against.

Cast your vote.

Has every delegate voted? Does any delegate desire to change his vote?

The Clerk will record the vote.

There being 99 votes in the affirmative, and one in the negative, the motion is carried.

The interfering rules are suspended to permit consideration of amendment 10 to section 2.01.

The Chair recognizes Chairman Koss.

DELEGATE KOSS: Mr. Chairman and fellow delegates, hortly after the action on S&D-11 was completed we were made aware of a factor in that article that was certainly not the intent of the committee, and that was that there was no residency requirement in the article in anything smaller than a county.

It was certainly our intention in order to be eligible to vote for a member of the House of Delegates, or a Senator, or a Congressman, indeed you had to be a registered voter in that district.

For this reason we are offering the language in amendment 10. Thisis substantially the same language as you will find in Article 1, section 1 of the present Constitution.

I sincerely hope that you will act favorably on this amendment.

THE PRESIDENT: Any questions of the sponsor of the amendment?

Delegate Burdette.

DELEGATE BURDETTE: Mr. President, in line 10, Delegate Koss -- there is a problem of language which seems to leave me with uncertainty as to the meaning. It says then to entitle a person to vote for such an officer, the person, I wonder if you mean by that "then to vote for such an officer a person". The second one is very closely related.

I am sure that Delegate Loss has no intention of

making a Constitutional clause here which would have the effect of causing this to be the sole criterion for the right to vote in this situation.

I haven't been able to deal with that language, but it strikes me that it could be interpreted to eliminate all other criteria, and I am sure that it not intended either.

THE PRESIDENT: Delegate Koss, maybe we can deal with one suggestion at a time.

Do you respond to the first suggestion?

DELEGATE KOSS: Certainly it was, as I remember Delegate Burdette's first comment, then a person. Was that in line 10?

THE PRESIDENT: To strike from line 10 the words "to entitle a person" so it would read "then to vote for such an officer, a person."

DELEGATE KOSS: That would certainly carry out our intent.

THE PRESIDENT: Is there any objection to considering a modification of the amendment by striking from line 10 the words "to entitled a person", and to

strike from line 11 the word "they", and insert in lieu thereof the word "a"?

The Chair hears none, and the modification is made.

Delegate Burdette, as I understand your second question, it was that even with this modification could it be suggested that the qualification stated in this amendment was the sole qualification to vote. Is that your point?

DELEGATE BURDETTE: I fear so. In the original language, and the way we have modified it it accentuates it.

THE PRESIDENT: If you would look at section 2.01, as adopted, on second reading. you might not reach the same conclusion.

Delegate Koss.

DELEGATE KOSS: I was going to suggest that to Delegate Burdette. This was not our intent. Certainly the qualifications that are spelled out prior to that in that section would also be applicable.

THE PRESIDENT: If there is still a question the question might possibly be removed by the insertion in line 11 after the word "person",the words"in addition",

although I suggest it would be rather awkward.

Delegate Burdette?

DELEGATE BURDETTE: Yes, that would do it. I am really raising this question because I think this is a matter that can be worked out in Style.

THE PRESIDENT: Very well.

Delegate Rybczynski.

DELEGATE RYBCZYNSKI: I would suggest, sir in line 11, perhaps just a substitution of a word might help. Instead of saying "a person", saying "a voter".

THE PRESIDENT: Did you catch the suggestion, Delegate Koss?

Delegate Koss, did you get the suggestion? I would question, myself, that the word would help at all.

Do you have a different idea?

DELEGATE KOSS: I am inclined to agree with the President on that.

THE PRESIDENT: Delegate Carson.

DELEGATE CARSON: Mr. President, I have two questions for the Chairman, for Delegate Koss.

THE PRESIDENT: Delegate Koss, do you yield to

a question?

Delegate Carson.

DELEGATE CARSON: The first is in your amendment lines 15 through 18. You want to strike the word "county" and insert in lieu therof the word "electoral district."

As I understand it, that would mean, it would read "removal from one delegate district or electoral district to another"?

DELEGATE KOSS: That was amended previously, it said "remove all from one county to another."

THE PRESIDENT: Delegate Carson, section 2.01 as amended on second reading does not contain the words "delegate district."

DELEGATE CARSON: I understand that now. Why is it not necessary to keep the word "county" in? We are still going to have county elections, and in many counties you won't have counties broken down into electoral districts, perhaps.

THE PRESIDENT: May the Chair, while Delegate Koss is pondering that, may the Chair ask if you do not have a county divided into electoral districts, would not the county itself constitute an electoral district?

The Chair understands that the words "electoral district" is not used anywhere else in this artic le, and therefore hasonly its ordinary name.

DELEGATE CARSON: Except for the language in 7 through 13, which qualifies an electoral district as to occur only when a county is divided to form different electoral districts.

THE PRESIDENT: The Chair suggests you read that very carefully, and I doubt that you would reach that conclusion; that is the only -- I am not being facetious when I say that I think the preceding sentence is susceptible of the construction you put on it, but I don't think that is the only construction.

Delegate Hanson.

DELEGATE HANSON: Mr. President, I have two questions of Chairman Koss.

THE PRESIDENT: Delegate Koss, do you yield to a question.

DELEGATE KOSS: Yes.

THE PRESIDENT: Delegate Hanson.

DELEGATE HANSON: First of all, what happens under this provision to the eligibility of a person to vote

if the redistricting for one or more of these offices has occurred less than three months before the date of the election?

I am thinking of situations of which I have knowledge in other States, and which we almost approached in Congressional redistricting in this State, in which the districts were not drawn a very long time before the election was held.

In some cases the districts were drawn under court order, and the election was held perhaps within six weeks or two months thereafter.

DELEGATE KOSS: Delegate Hanson, I am not immediately aware of what the time table that you put on the legislative article on redistricting occurred in terms of the possibility of such a possible eventuality developing.

DELEGATE HANSON: Mr. President, Delegate Cardin has, I believe, satisfactorily answered the question. And that is that a person lives somewhere, and when the districts are drawn, he will then have lived in that district for at least a period of three months. Ithink that response takes care of my second question in part.

I am not sure it does fully.

We are dealing with the problem of multiple districts in which a person will live simultaneously in a legislative district, a councilmanic district, and possibly a Congressional district. By virtue of moving he will remain in two but not in a third. In such an eventuality what kind of administrative problems may we be creating on election day to determine whether a person is qualified to vote in all three elections?

THE PRESIDENT: Delegate Koss.

DELEGATE KOSS: My only answer to that could be that he is therefore not qualified to vote in the one election.

THE PRESIDENT: Delegate Hanson.

DELEGATE HANSON: Would this require some additional Constitutional language, or at least some implementing language? Will this be taken care of by legislation?

THE PRESIDENT: Delegate Hanson, the Chair recalls a good bit of this matter in the Committee of the Whole, and the suggestion that by use of modern data processing and

other electronic devices, there really is no problem in this area that could not be solved by appropriate legislative and administrative action.

Delegate Schloeder.

DELEGATE SCHLOEDER: I just want to underscore the Chair's remarks,and say that the intent of the committee was exactly as Mrs. Cardin said in her response to Delegate Hanson: the answer to his rirst question. The intent of the committee was very clearly that the voter would have to live somewhere, and would then vote in the old district, and in answer to the second part of Delegate Hanson's question, it was made very clear to us by Board of Election Supervisors that there would not be any real administrative problems as far as this was concerned.

THE PRESIDENT: Delegate Cardin.

DELEGATE CARDIN: Mr. President, in view of the problems that have arisen, I would like to offer with the consent of the Chairman, and with the other sponsors, this one minor style change. I, myself, at present live in the second Senatorial, third legislative, seventh legislative district. I live in three different districts.

The county knows where I live, and where I am registered.

If we look at line 7 and we were to reword that, if any county is divided to form different electoral districts or portions thereof, perhaps that might ease some of the problems.

Delegate Koss, did you follow this suggestion?

DELEGATE KOSS: Delegate Cardin, I am advised to accept it.

THE PRESIDENT: The suggestion is that the amendment be further modified to strike from line 7 the word "portions" and from line 8 the words "of different", and after the words "or electoral districts" in line 8 to add the words "or portions thereof".

Is there any objection to the modification?

DELEGATE CARDIN: It is to delete "portions" on line 7 and "of" on line 8?

THE PRESIDENT: You are quite correct. I follow. The proposed amendment is to delete the word "portions" in line 7, and the word "of" in line 8, and to add, after the word "districts" in line 8, the words "or portions thereof".

Is there any objection to the modification as stated?

The Chair hears none; the modifications will be made.

Lines 7 and 8 now read: "If any county is divided to form different electoral districts or portions thereof for the".

Delegate Cardin, do you have a further comment?

DELEGATE CARDIN: I would just like to clarify that line 12 perhaps need be changed for similar construction of that electoral district or portions thereof, or shall we leave it "electoral district" with the understanding that it would encompass theprevious change?

THE PRESIDENT: The Chair suggests to Delegate Penniman, if line 12 is not changed on the floor, the Committee on Style would change it to eliminate the word "that" and put in the word "they". Am I correct about that?

DELEGATE CARDIN: Yes.

THE PRESIDENT: To be consistent with other similar changes that the committee has made.

DELEGATE PENNIMAN: That is correct, Mr. President.

THE PRESIDENT: Would you accept that change, Delegate Koss?

DELEGATE KOSS: Yes, Mr. President.

THE PRESIDENT: In line 12, change the word "that" to the word "they". Is there any objection? There is no objection. Sothere will be no objection, the Chair will read the amendment in lines 7 to 13 as modified:

"If any county is divided to form different electoral districts or portions thereof for the election of any national, state or county officer, then to vote for such an officer a person shall have been a resident of the electoral district three months next preceding the election."

Any further questions? Any further discussion? Are you ready for the question?

The question arises on the adoption of amendment 10 as modified. A vote Aye is a vote in favor of the amendment. A vote No is a vote against.

Cast your vote.

Has every delegate voted? Does any delegate desire to change his vote? The Clerk will record the vote.

There being 102 votes in the affirmative and 3 votes in the negative, the motion is carried, amendment 10 is adopted, Section 2.01 as adopted on second reading is now amended by Amendment No. 10.

Delegate Koss, in order to clear the record, do you now formally withdraw your Motion No. 8 which was Item 7-C on the calendar?

DELEGATE KOSS: Mr. President, I didn't have opportunity to speak to you about this before. I know it is not quite protocol for me to use this means to communicate with you.

After this item was adopted, it was pointed out that what was accepted as a style change at 2.01 was in fact a change in substance and did violence to the intent of the committee. There is an amendment which is L which would rectify that mistake.

THE PRESIDENT: I am lost. What mistake are you talking about? To what section?

DELEGATE KOSS: Section 2.01.

THE PRESIDENT: The same section?

DELEGATE KOSS: Same section, line 16.

THE PRESIDENT: 16 of which print?

DELEGATE KOSS: Of the Style and Drafting Report No. 11.

THE PRESIDENT: Yes.

DELEGATE KOSS: Line 16, draft that came out of Style and Drafting says in that line shall be eligible to register to vote. That in effect requires that when a person goes to register he shall be a citizen, he shall be nineteen. It was never the intent nor has it been the practice in this state to tie those requirements to the time you went to register. Those were tied to the time of the election.

In order to make clear what the intent of the committee was, I think that intent was borne out in the dialogue on the floor, there is Amendment L, offered by various members of the committee to strike in line 16 the words"to register." That would make clear the fact that the requirement of citizenship and age are tied to

the process of voting and not to the process of registration.

THE PRESIDENT: Before we get to that, may we clear the record? Do you formally withdraw your amendment 8, which is Item 7-C on the calendar?

DELEGATE KOSS: I move to withdraw it or I withdraw motion No. 8.

THE PRESIDENT: Delegate Penniman, what Delegate Koss has stated as to the discussion which occurred, I think both in the Committee of the Whole and on second reading is exactly in accord with the recollection of the Chair. My hesitancy comes about because I also recall that the effort was made to amend this section so that it would be clear that everywhere else in the article by referring to qualified voter we would mean a voter possessing the qualifications of Section 2.01 who had registered.

The amendment suggested by Delegate Koss does not to the Chair seem to interfere with that conclusion but I would like you to consider it also.

DELEGATE PENNIMAN: It does not interfere with

that conclusion. It leaves the qualified voter as one who is also registered.

THE PRESIDENT:: I suggest, Delegate Koss, you move to suspend the interfering rules so as to offer Amendment 11 to Section 2.01 as adopted on second reading. Do you so move?

DELEGATE KOSS: Mr. President, I so move.

THE PRESIDENT: Is there a second?

(The motion was duly seconded.)

THE PRESIDENT: Will the pages please distribute Amendment L, L for lonely. I understand the amendment is not back from the printers. Is there any objection to considering the amendment notwithstanding the fact that it is not printed? If you have before you Committee Recommendation S&E-1 as adopted on second reading, the 16th line reads "shall be eligible to register to vote", the amendment desired is to strike the words "to register" so that the line would read "shall be eligible to vote". The entire sentence would then read "every citizen of the United States who has attained the age of nineteen years who has been a

resident of this state six months and the House of Delegates county in which he offers to vote for three months next preceding an election shall be eligible to vote and, if registered, shall be qualified to vote."

Is there any objection to considering the amendment notwithstanding the fact it is not printed? The Chair hears none.

Delegate Koss.

DELEGATE KOSS: Mr. President, all I want to point out was that House of Delegates district had been stricken in line 13, part of it.

THE PRESIDENT: Sorry. The Chair overlooked that in reading the effect of the amendment. The question arises on motion to suspend all interfering rules to permit consideration of Amendment 11 to Section 2.01 as adopted on second reading. It requires a roll call vote. All in favor, signify -- we will have a roll call vote. A vote Aye is a vote in favor of suspension of the rules, a vote No, a vote against. Cast your vote.

(Whereupon, a roll call vote was taken.)

Has every delegate voted? Does any delegate

desire to change his vote? The Clerk will record the vote.

There being 98 votes in the affirmative and none in the negative, the motion is adopted and the interfering rules are suspended.

The question now arises on Amendment 11.

Delegate Koss, do you have any further comment?

DELEGATE KOSS: No, sir.

THE PRESIDENT: Is there any further discussion? Ready for the question? The question arises on adoption of Amendment 11 to strike from line 16 in Section 2.01 as adopted on second reading the words "to register".

Delegate Boyles.

DELEGATE BOYLES: Mr. President, I wish you would assure me that being eligible to vote and being qualified to vote are two different things.

THE PRESIDENT: I think if I would read the rest of the sentence, this would be clear to you. If the amendment is adopted, the first sentence of Section 2.01 would read as follows. "Every citizen of the United States who has attained the age of nineteen years who

has been a resident of this state for six months and of the county in which he offers to vote for three months next preceding an election shall be eligible to vote and if registered shall be qualified to vote in all Federal, State and County elections held in this state.

Sorry. The word "national" is substituted for the word "Federal".

Are you ready for the question? The question arises on the adoption of Amendment No. 11. A vote Aye is a vote in favor of the amendment, a vote No is a vote against. Delegate Key.

DELEGATE KEY: I am sorry to delay the proceedings but I have a question.

THE PRESIDENT: State the question.

DELEGATE KEY: If line 16 says "shall be eligible to vote", how can you put further qualification in line 17 "if registered".

THE PRESIDENT: Delegate Cardin.

DELEGATE CARDIN: The present Constitution and the present laws state that there are certain eligibility requirements which one must have in order to register to

vote. What we have established in Section 2.01 is the eligibility. If the eligibility is met then the voter must register. After that step he is then qualified to vote in any of the elections.

THE PRESIDENT: Delegate Key, the Chair would point out to you in all of the succeeding sections the phrase that is used in referring to voters is qualified voters. So that it means a person who is eligible and who is registered.

DELEGATE KEY: I am wondering further. That is all right.

THE PRESIDENT: Are you ready for the question? The question arises on the adoption of Amendment No. 11. A vote Aye is a vote in favor of the amendment. A vote no is a vote against. Cast your votes.

(Whereupon, the roll call vote was taken.)

Has every delegate voted? Does any delegate desire to change his vote? The Clerk will record the vote.

There being 101 votes in the affirmative and 1 in the negative, the motion is carried, the amendment

is adopted. Delegate Koss, the Chair has been handed Amendment K. Is there any desire to offer it?

DELEGATE KOSS: No.

THE PRESIDENT: If this were not the very dignified Constitutional Convention of Maryland, meeting for the first time in 100 years, the Chair would be disposed at this point to say Glory Hallelujah, we have concluded the second reading. (Applause.)

Now to some lighter tasks.

Consideration of Committee Recommendation GP-13. This is the schedule of transitional provisions and the schedule of legislation. It is going to be somewhat difficult to present this to you in an orderly manner because so many persons have participated in the preparation and the compilation really of the various sections of this draft and because it touches upon the work of every substantive committee.

As the Chair previously advised you, it is desired to present to you a full explanation so that hopefully there will not be any difficulty encountered in debate and voting on the various provisions. You should

have before you the blue copy, Committee Recommendation GP-13, and also it is imperative that you have before you the committee memorandum GP-13 which is just about as extensive and the Chair suggests that you not have before you other recommendations because, I believe you will find in the committee recommendation sufficient information to enable you to identify every other section thus far adopted on second reading, which is referred to in the blue recommendation.

As you can readily understand, there have been problems involved in preparing Committee Recommendation GP-13 during the past few weeks while this Convention has been considering the various recommendations. It has been virtually impossible to keep abreast of the section numbering and any changes in the section numbers.

The Chair would be greatly surprised if there are not somewhere in the committee recommendations erroneous section references due to the fact that since the Committee Recommendation GP-13 was prepared, we have altered some of the sections referred to. Please, if you note these, call them to the attention of everybody by

taking the floor at the time. It will be helpful if you do that.

In order to present the memorandum to you in some kind of coherent style, the Chair will request all of the clerks to leave the clerk's desk so that the desks will be available during the presentation and the question and answer period for the sole use of the committee chairmen and their staff. Delegate Boyer, as Chairman of the Committee on General Provisions, will make the presentation. He will be assisted by the two staff members who have done most of the detail work in the preparation of the recommendation and the memorandum. That is Mr. Vernon Miller and Mr. William Adkins. Mr. Boyer is also requesting that Delegate John Hardwicke come to the desk because Delegate John Hardwicke has acted as a sort of subcommittee liaison between the staff members and Delegate Boyer's committee and the various committee chairmen.

Notwithstanding these rather elaborate preparations, it will be necessary from time to time to refer questions not to any of the people whom I have

named but to the chairmen of the committees. I think it will be desirable to proceed through the explanation, not section by section, but article by article, because the sections are arranged in this way and in this manner the questions that will be directed to the chairman of a substantive committee will be directed to one such chairman at a time.

This is a matter to be considered by the Committee of the Whole. The chair, therefore, recognizes Delegate Powers so we may resolve ourselves into the Committee of the Whole.

DELEGATE POWERS: Mr. President, I move the Convention resolve itself into the Committee of the Whole so it may consider general orders of the day.

THE PRESIDENT: Is there a second?

(The motion was duly seconded.)

THE PRESIDENT: All in favor, signify by saying Aye; contrary, No. The Ayes have it. So ordered.

(Whereupon, at 10:08 a.m., the Convention resolved itself into the Committee of the Whole.)

(The mace was removed by the Sergeant at Arms.)

THE CHAIRMAN: Delegate Boyer. Mr. Miller. Mr. Adkins. Delegate Hardwicke.

Delegate Boyer.

DELEGATE BOYER: Mr. Chairman, ladies and gentlemen of the Committee of the Whole, it appears that we are coming down the home stretch on what hopefully will be the last committee recommendation, GP-13.

With your indulgence, I would like to enjoy the luxury of approximately five minutes to tell you how we got here and to give you a brief rundown on what has led up to this particular moment on General Provisions 13.

As you recall, in the original set-up, early days of this Convention, the transitory provisions and schedule of legislation had originally been assigned tentatively to the General Provisions Committee. At the Genesis of things, this seemed possible and probable and accurate to do so. However, as time developed and pushed on, it appeared that nothing could be done in the area of transitory provisions or the schedule of legislation until all the other substantive committees had completed

their work so that at that stage someone, perhaps the General Provisions Committee, could look over the entire spectrum of what we had done thus far and implement it by transitory provisions and schedules.

As time went on, it became more evident that it would be physically and chronologically impossible to do this in the General Provisions Committee as a substantive committee. It would have meant for this fifteen-member committee or any other fifteen members of this Convention for any group to do a just job to the very important matters before us at this stage, it would have required hearing from all the witnesses that the other seven substantive committees probably had heard from in order for us to get a grasp of the problem so that we could write the recommendation before you. Time did not permit the luxury of the duplication of witnesses even if they had been available and were willing to come down once more to testify.

So at this time we thought that perhaps having an ad hoc committee of all committee chairmen who had heard these important matters from their own viewpoint,

that we would form this ad hoc committee to write this legislation. This is what was done.

The committee chairmen met, pooled our resources together, and with the aid of the legal staff of each of the committees, plunged into the pool of transitory provisions and schedule of legislation. What you have before you is the result of this work. The chief of the legal staff who handled this was the staff member of the General Provisions Committee, Mr. Vernon Miller, assisted by the staff member of the Judicial Branch, who seemed to cause more of the problem than the transitory provisions, Mr. William Adkins. These two gentlemen and Delegate Hardwicke formed the subcommittee who have done the lion's share of this matter before you now. This brings us up to this situation as of 10:10 tonight.

It was thought at this stage that perhaps I would give a broad brush treatment, a wide angle view of what we are approaching and then seek the assistance and turn it over to Delegate Hardwicke who has lived with this and is on top of all the matters, and he in turn will, if

necessary, call on the chairman of the individual substantive committees should any sticky questions develop.

GP-13 consists of two main parts. One is a schedule of transitional provisions. The other is schedule of legislation. There is a difference between these two.

The schedule of transitional provisions is of constitutional force and cannot be amended or repealed except by constitutional process and fiat. It can only be altered through constitutional amendment.

These provisions are of limited duration in time, that is, the schedule of legislation is of limited duration in time. Because of this it was thought that these transitional provisions should be, it would be more orderly not to include them in the body of the constitution itself but to separate them from the constitution which in itself would have permanent effect but as the transitional period provisions fade out, they would die of their own weight and natural causes.

The schedule of legislation, however, is of a different animal. These contain provisions to be enacted by this Convention and intended to be of legislative

force, and can be in time repealed, amended, or handled in any other way by the General Assembly.

The schedule of legislation consists of two main bodies. One category are those provisions included in the prior constitution and not fully implemented by legislation, which this Constitution has determined not to include in the Constitution because they are matters which should be properly dealt with by the General Assembly.

The second category are items of legislation necessary to implement the provisions of this, your new Constitution, and those which their enactment could not await General Assembly action.

In preparing both the schedule of transitional provisions and schedule of legislation an analysis was made of both provisions of the new constitutions and provisions of the old constitution as sent to us early in these convention days by President's memo No. 13. This is a very rough, wide angle approach to the provisions of GP13. I would then ask Delegate Hardwicke to give you the details of it and answer any questions that might come

forth.

DELEGATE JAMES: Delegate Hardwicke.

DELEGATE HARDWICKE: Ladies and gentlemen of the Convention, I think that in going through GP-13 you should have the blue copy on one hand and the memorandum on the other. I suggest that assuming the Chair approves that we go through it section by section.

Section 1, which is a definition of the term prior constitution, which will be used to refer to the Constitution of 1867 as amended.

Section 2 is broken into two parts as to incumbents. The first two sentences refer to constitutional officers. The last sentence refers to nonconstitutional public officers. As to constitutional officers --

DELEGATE JAMES: Delegate Hardwicke, would you explain what you are hitting first.

DELEGATE HARDWICKE: We are doing the transitional provisions. These transitional provisions, as Delegate Boyer just stated, all have constitutional weight. In other words, this is part of the constitution and I noticed a great many of you referred to it as

transitory. They are transitory and transitional, transitory in the sense they are not permanent. All these transitional provisions when you get into personal rights and so forth have expiration dates attached to them. So in the transitional provisions these are parts of the Constitution. Be careful to distinguish those from the legislative provisions which are just statute law. In other words, this Convention is passing statute law and the statute law begins on Page 15, called Schedule of Legislation.

This statute law, as Delegate Boyer stated, will be effective July 1, 1968, but on July 2, 1968, the General Assembly of Maryland can meet and cancel every bit of it. It is subject to the legislature. So it has no lasting effect whatsoever. The transitional provisions, however, are aimed at taking over the old Constitution with the new Constitution gradually in a period of three or four years terminating in most instances no later than January 6, 1971. The first thing is going through the transitional provisions which are part of the Constitution of constitutional weight not subject to

change by the General Assembly.

Section 1 is definition.

Section 2 keeps incumbents in office. Under two headings, constitutional officers are continued only insofar as they are expressly continued. That is, the old Constitution goes out. So all constitutional officers in it go out unless we have expressly continued one. As to the last part of Section 2, we are dealing with nonconstitutional officers but persons who are appointed, named, elected, and so forth, but pursuant to the terms of the Constitution. They stay in unless they are expressly taken out. The reason for that is that the old Constitution is automatically superseded by the new so that officers created pursuant to the old Constitution go with it unless they are expressly continued. But as far as nonconstitutional officers, they are set up by virtue of law and since they are set up by law, they continue by virtue of the fact that the law continues.

This section 2 is extremely important.

Shall we get into personal rights?

DELEGATE JAMES: Any questions on Sections 1

or 2? Delegate Armor.

DELEGATE ARMOR: Is it in order to have questions after finishing each section?

DELEGATE JAMES: I would assume this would be proper procedure.

DELEGATE ARMOR: If this question is in order, if not, I will hold it until later, but this is a specific question.

DELEGATE JAMES: It would be difficult to proceed in any other way. That we should have questioning after each section, although we have been following a different procedure but -- just a moment. It seems to be more pertinent while you are explaining the section to have it at this time.

DELEGATE ARMOR: This is a specific question asked of me the last couple days. I think it has quite a bearing on the final approval on May 14 for employees of the state and of the various sections to know where they stand. Otherwise, some of those employees might take the attitude of going out working against it. Specifically it is this. There are twenty-eight employees in the

Municipal Court in Baltimore. These employees are under merit employment. The oldest tenure of service is twenty-eight years. Twenty-eight years of continued service.

[illegible] would stand under th[illegible]

As I see it, they would be covered down here in these lines 23, 24, and 25. They would not be in danger of losing their jobs. Is that correct?

DELEGATE HARDWICKE: That is correct, Delegate Armor. That is absolutely correct. That is exactly what we intended in this last sentence.

DELEGATE ARMOR: Thank you very much, Delegate Hardwicke.

DELEGATE HARDWICKE: Assuming we are ready to go into personal rights, Section 3, Section 1.16 provides private property shall not be taken or damaged for public use or purposes without just compensation.

I believe there was an amendment with regard to damages that was to be regulated by the General Assembly. It is for that reason that in Section 3(a)

we have provided that this provision, except insofar as it pertains to, that this provisions, so far as it pertains to damage to property shall not take effect until July 1, 1969, because that will give the legislature one section in which do meet and pass provisions with regard to damage to property. The amendment that was adopted says except that the allowance of compensation for property damage but not taken for public use or purposes shall be subject to any limitations or restrictions the General Assembly may prescribe by law. We postponed that section to July, 1969, so the Legislature could meet one section and make provision with regard to damage. Otherwise, the eminent domain section is in effect immediately.

DELEGATE JAMES: Delegate Johnson.

DELEGATE JOHNSON: I am not sure I understand the full force and effect of this postponement of the effective date of this section. Would that be when the alleged damage occurred? Since it goes hand in hand with some taking of some property, would it be at the time of the taking or woujd it be at the time of the damage or

would it be at the time of the suit?

DELEGATE HARDWICKE: It is at the time of the damage.

DELEGATE JAMES: Delegate Johnson.

DELEGATE JOHNSON: What do you mean by at the time of the damage?

DELEGATE HARDWICKE: Generally speaking, that would be at the time of the taking. In other words, the taking would cause a damage. If the taking caused the damage, it would be the time of the taking. Conceivably the damage might occur not by reason of taking but by reason of construction of a road and could be a later date but we mean in this case the time of damage to the property and at the time of the damage to the property must occur on or after July 1, 1969, for a person to have access to this provision.

DELEGATE JAMES: Delegate Robie, do you have a question? Excuse me. I thought Delegate Johnson had completed his question. Wait until Delegate Johnson completes his question.

DELEGATE JOHNSON: Isn't it a fact there could

be a taking July 1, 1968, and some damage resulting to an adjoining property and this damage or alleged damage would continue until '69 or 1970 and that the individual who claims "damage", could still bring the suit even though the alleged taking took place the year before as long as the damage was in effect as long as the damage continued?

DELEGATE HARDWICKE: No, it is when the cause of action arises.

DELEGATE JAMES: Delegate Johnson.

DELEGATE JOHNSON: Suppose the individual didn't claim damage until July 1, 1969, even though perhaps technically he could have claimed damage prior to that time?

DELEGATE HARDWICKE: As I see it, it is computed exactly like the statute of limitations on contract actions or tort actions, you compute your time from the time the cause of action is created or arises and it is to causes of action with respect to damage that occurs prior to July 1, 1969, they shall not be entitled to claim under the damage section of the new Constitution but if

the cause of action with respect to damages occurs on or after July 1, '69, they shall be entitled to damages.

DELEGATE JAMES: Delegate Robie.

DELEGATE KATHLEEN ROBIE: Did I understand you there would be one session of the General Assembly and as I read it, this would be two?

DELEGATE HARDWICKE: There would be only one section under the new Constitution, 1968 session of the General Assembly is under the old Constitution.

DELEGATE KATHLEEN ROBIE: You are right, thank you.

DELEGATE JAMES: Any further questions? Proceed, Delegate Hardwicke.

DELEGATE HARDWICKE: In Paragraph B --

DELEGATE JAMES: Delegate White has a question.

DELEGATE WHITE: Mr. Chairman, I was wondering if this Convention has the authority to change the effective date of this provision.

DELEGATE HARDWICKE: Delegate White, that question goes to the whole essence of the transitional provisions. We have the authority under the Enabling Act

under Section 16 of the Enabling Act, to provide that various sections of the Constitution shall go into effect at various times.

Second it is within our power as the instruments of the people of Maryland sitting in Constitutional Convention to provide that the Constitution shall go into effect at various times.

DELEGATE WHITE: The reason I ask the question is it appears that maybe we are putting the effective date off just a bit too long. I don't have enough information to make a sound judgment on it. I would like to have some comment on it. Why are we actually making it effective in 1969?

DELEGATE JAMES: Could the Chair interpose here? If you are putting a standard of damage as to the legislature and the legislature never defined measure of damage, you can have no damages under the Constitution as the chair sees it. What is your comment on that, Delegate Hardwicke?

DELEGATE HARDWICKE: That is perfectly correct. Without this provision when this constitution

goes into effect, this summer, July 1 coming up, the legislature will presumably not be sitting and they will not have made any arrangements or regulations by law with regard to this thing we said they shall make regulations for and we want to give them one session in which to act on the subject.

DELEGATE WHITE: We have had some discussions as to the possible need for the General Assembly to sit continuously in order to get this job done. I wonder if this becomes effective next summer if they could not begin sitting sooner than the next session of the House in January.

DELEGATE JAMES: Delegate Kiefer.

DELEGATE KIEFER: Mr. Chairman, Delegate White, as this was first written, it was without limitation except description of the word damage. It was amended to make the word damage as defined by the legislature. The legislature has to have opportunity to meet and to come up with some kind of a definition. So we had to put a cut-off date, if the Constitution meets or is effective as of July 1, 1968, the legislature

will not meet until January, '69. So there has to be some kind of a period for the legislature to act. Normally as you know, the statutes enacted by a session take effect the first of January, 1969. I don't see how we could possibly make it any earlier than July 1, 1969, by what we have done here.

DELEGATE JAMES: Delegate Willoner.

DELEGATE WILLONER: I was wondering in your definition of when the damages occurred, in a case of continuing damages, would not damage, essentially several causes of action, arise as a result of, say, one take, and the cause of action arose after the first of July, 1969, of course, it would be actionable, would it not?

DELEGATE HARDWICKE: I think you have in mind that kind of tort each day of which is supposed to be a new cause of action. Is that the sort of thing you are thinking of?

DELEGATE WILLONER: Yes.

DELEGATE HARDWICKE: If that is the kind of tort you are talking about, then since each day is a

renewal of it de novo so to speak, I would expect the court to hold that the continuation of it beginning on July 1, 1969, would be compensable under this section.

DELEGATE WILLONER: I have another question that I may be wrong about. You referred to the General Assembly defining damages in this situation. I thought they could except areas of damage, that was the intent of the amendment, I thought, and in that case, if they did not act, the damage would be left up to development by the court, is that correct?

DELEGATE HARDWICKE: I don't propose to make any substitute definitions. As I read the amendment which was proposed, the limitation restriction could cut damages down to practically nothing.

DELEGATE WILLONER: I won't disagree with that but I mean it is a matter of restriction opposed to definition, is it not?

DELEGATE JAMES: Mr. Kiefer.

DELEGATE KIEFER: Mr. Chairman, what Delegate Willoner says is correct but the legislature still has to have opportunity to act if it wants to. That's why we

set that date. I don't know why we have to get excited about it. There is no earlier date that can be made.

DELEGATE JAMES: Delegate Willoner.

DELEGATE WILLONER: I am not criticizing the fact of the date. The discussion turned into matter of definition. We leave it up to them to define the matter of damage. This was a matter of allowing the General Assembly to protect this area and not as a matter of defining it so if they did define it, we wouldn't have any damages.

DELEGATE JAMES: Delegate Hardwicke.

DELEGATE HARDWICKE: In terms of the amendment, I think the General Assembly shall make limitations and restrictions and they have to have one session in which to make limitations and restrictions.

DELEGATE JAMES: Delegate Willoner.

DELEGATE WILLONER: I would agree with that. My only point was it was a matter of defining the word. If they chose not to act in that year, we would have a definition made by the court.

DELEGATE HARDWICKE: That is correct.

DELEGATE JAMES: Delegate Henderson.

DELEGATE HENDERSON: I would suggest there is another point of the July 1 date which is a beginning of the new budget year and I assume when they passed this law, they will make some provision for actual payment in the budget. They have to do that. I don't see how you can set up a claim sooner than July 1 for that additional reason. It seems to me it is futile for us to argue as to what the extent of recovery might be, whether you can antedate the statute. All we are trying to do here is fix the date when the new provision goes into effect. I suggest July 1 is the earliest that can be done.

DELEGATE HARDWICKE: I would imagine that in the general session in 1969 all the laws will be made effective as of July 1, 1969, and since that will be the effective date, that will tie in with this particular date for laws enacted during the 1969 session of the General Assembly.

DELEGATE JAMES: Delegate Rybczynski.

DELEGATE RYBCZYNSKI: Delegate Hardwicke, in

the event the legislature fails to act on the amendment, during that session, does that mean that the citizen will have no right under what we say in that article?

DELEGATE HARDWICKE: I think Delegate Willoner pointed out, I believe correctly so, that if the General Assembly takes no action, the right would be unlimited by law but would be subject to interpretation by the courts.

In other words, there would be no limitation imposed by law and it would be a matter of strict judicial interpretation.

DELEGATE JAMES: Delegate Bamberger.

DELEGATE BAMBERGER: Mr. Chairman, may I suggest that in the interest of time it might be more expeditious if instead of entertaining sections as to each section now at a time when I don't think all of us have had an opportunity to go through this whole package and at a time when it is difficult for us to even find the text of the particular sections as they have been amended on second reading, it seems to me that perhaps the Chair might get the sense of the house as to whether it would

serve us better to have Delegate Hardwicke go through this whole thing first, each of us have particular concerns and we can do a little research overnight, then entertain questions as to the sections tomorrow.

DELEGATE JAMES: I frankly confess that I think we all ought to have opportunity to review these. I don't think we have had that opportunity. I think for the moment in view of the inadequacy of our time preparation in a sense, to take them section by section probably is a little more satisfactory but tomorrow it might well be, after we have had a chance to review these sections, that we could permit Delegate Hardwicke just simply to continue through the entire presentation, then as we have been doing, simply have a question period on the whole area of transitional provisions, then the schedule of transitional provisions could be reviewed and then a question period on that.

Delegate Hardwicke.

DELEGATE HARDWICKE: Do you want to hold questions until the end?

DELEGATE JAMES: Time is growing short. We

only have twenty more minutes. I don't think we can continue this thing on a satisfactory basis for very long this evening. The Convention, if it will permit me, I will send a message to the President. It seems to me as the Convention grows a little sparser in population here that it grows toward 11 o'clock and with that theopportunity of reading this in advance of the presentation, it would really be the proper thing to adjourn and reassemble in the morning in a little better state of preparation.

DELEGATE HARDWICKE: May I make a suggestion?

DELEGATE JAMES: Delegate Hardwicke.

DELEGATE HARDWICKE: Suppose we go through and just hit the high spots and not have any questions this evening and tomorrow we can go section by section after you have perspective on it.

DELEGATE JAMES: Personally, I feel estopped.

Delegate Gleason.

DELEGATE GLEASON: Mr.President, without attempting --

DELEGATE JAMES: Delegate Powers, in is going/to talk

to President Eney.

DELEGATE GLEASON: The thing that concerned me a little bit is that many of these things we have acted upon some weeks ago and, of course, many of these things haven't been acted upon at all. I think a great deal of the questions could be cut down if we had whatever the third reading final edition looked like. Is there any method by which this thing can be made available to us?

For example, you just referred to this damage section and the General Assembly. We have to know or recall what that was. We either get it by questions which provoke other questions or we read it, which may provoke more questions. What is the status?

DELEGATE JAMES: In my book I have what has been done so that I have something to refer to and if a member doesn't have that, the only way I know to get it is to wait until it is printed and have it mailed to him.

Delegate Powers is going to confer with President Eney. I have a suspicion that we are going to

close out at a very early time and come in in the morning when we have better preparation. Delegate Hardwicke says he will continue trying to hit the high spots until we get word from President Eney.

DELEGATE HARDWICKE: I think we can use fifteen or twenty minutes here very profitably and I can show you the problem areas, if you will bear with me, and following along in the blue sheets with me. I will show you exactly where we had problems and then you can use the time between now and tomorrow to focus on those.

In personal rights, we had really only three questions. One was the damage question. The other is taking appeals from the Magistrate Courts to the Circuit Courts. Third was when to make sovereign immunity effect. Three, subcommittee elections. We had really two basic problems. One was when to make referendum provisions effective and the other was when to make referendum on local laws effective. That is Section 6.

On the Legislative Branch we had two basic problems. One, when does the General Assembly have to

reapportion itself under the new Constitution? We take the approach in here it has to reapportion itself for elections of 1970. That is in Section 7.

Section 7 and 8 tie in together. One pertains to the qualificationsof the legislature and the other is redistricting all in effect by 1970.

In the Executive Branch section 9 we have our Lieutenant Governor going into office, i n the election of 1970. Section 10, 11, 12, all pertain to the Executive Branch and they are going into office under the new Constitution in 1971.

Section 13 is the reorganization section which we are providing for. Incidentally, Section 13 was lifted completely out of the existing draft as we passed it. Section 14 deals with the continuation of Board of Public Works in 1971.

Then the Judicial Branch --

THE CHAIRMAN: Delegate Hardwicke, the sections on the Judicial Branch of this Committee Recommendation are perhaps the most involved and difficult to follow. It has been suggested to the Chair that we would

make more fruitful use of the time if instead of pursuing the consideration of this recommendation this evening and resuming tomorrow morning that we adjourn at this time to allow you to get some rest, reconvene a little later tomorrow morning at 10:30 because some of the delegates have indicated they would like the opportunity to read through quietly the recommendation before the explanation is continued.

The Chair thinks that in the longrun this may be more desirable because the transitional schedule is difficult to follow, it is important, I am hopeful that with a full explanation, the need for debate will be very greatly limited.

For that reason we will suspend consideration of the committee recommendation at this point. The Chair recognizes Delegate Powers.

DELEGATE POWERS: I move the Committee of the Whole rise and report that it has not yet concluded consideration of Committee Recommendation GP-13.

THE CHAIRMAN: Is there a second?

(The motion was duly seconded.)

THE CHAIRMAN: All in favor, signify by saying Aye; contrary, No. The Ayes have it. So ordered.

(The mace was replaced by the Sergeant at Arms.)

(Whereupon, at 10:45 p.m., the Committee of the Whole rose, and the Convention reconvened.)

THE PRESIDENT: The Convention will please come to order. On behalf of the Committee of the Whole, the Chair reports that the Committee has had under consideration Committee Recommendation GP-13, it still has it under consideration and desires leave to sit again.

Are there any announcements necessary to be maee by committee chairmen?

Any announcements by any others?

May the Chair suggest to you again not that you do any study work on this this evening, but we will be purposely delaying the hour of meeting until 10:30 tomorrow, it would be well worthwhile if you would take the two copies, the blue and the white, go through it quietly, and mark any places where you have questions.

All delegates not present at roll call may

indicate their presence now on supplemental roll call. Don't forget that the second and final picture of the entire Convention is scheduled for tomorrow afternoon. I think the hour is 2:30 or immediately after lunch, the cameras will be set up during the lunch recess. I am very anxious that every delegate be here for this picture, which will be the final opportunity.

Delegate Powers.

DELEGATE POWERS: Mr. President, I move we adjourn until 10:30 tomorrow morning.

(The motion was duly seconded.)

THE PRESIDENT: All in favor, signify by saying Aye; contrary, No. The Ayes have it. It is so ordered.

(Whereupon the Convention adjourned at 10:50 p.m. to reconvene January 4, 1968, at 10:30 a.m.)

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